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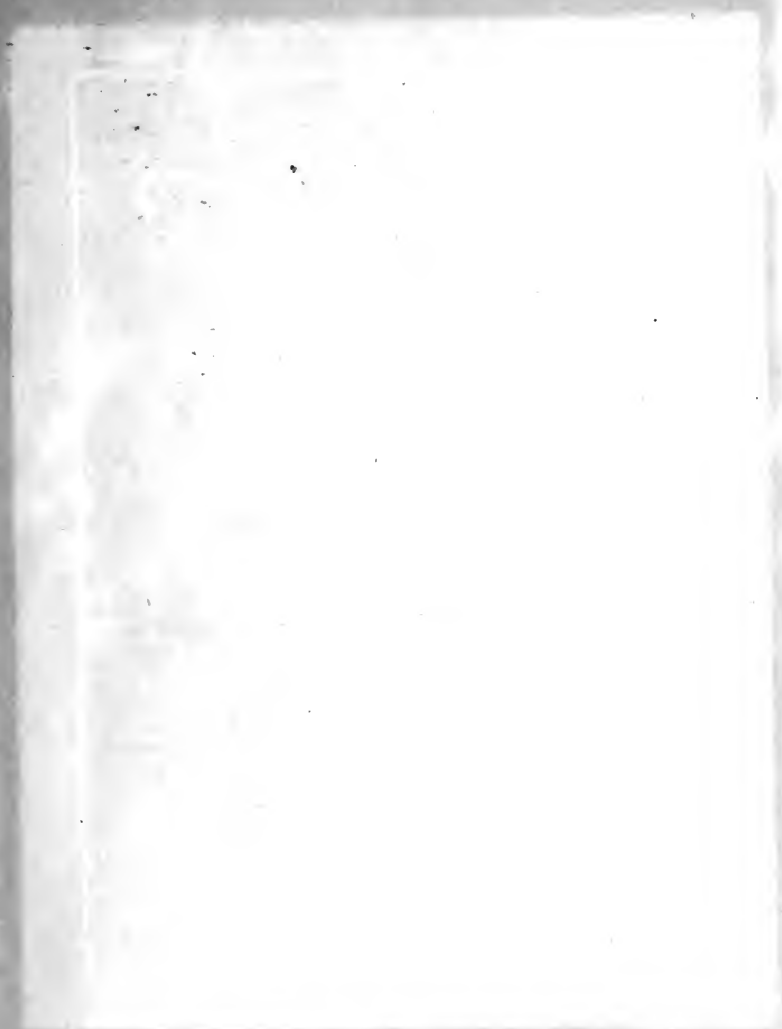
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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Appellant,*

*vs.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Appellee.*

**Transcript of Record**

Upon Appeal from the United States District Court  
for the Eastern District of Washington  
Northern Division

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No. 1577.

*In the District Court of the United States, Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

NAMES AND ADDRESSES OF SOLICITORS OF  
RECORD.

Messrs. DANSON, WILLIAMS & DANSON, 901-5  
Paulsen Building, Spokane Washington,

*Solicitors for Appellant.*

Messrs. McCARTHY & EDGE, Hyde Building, Spokane,  
Washington,

*Solicitors for Appellee.*

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IN EQUITY NO. 1577.

*In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*v.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

## AMENDED BILL.

*To the Judges of the Circuit Court of the United States  
for the Eastern District of Washington, Eastern  
Division:*

The McDonough Manufacturing Company, a corporation, duly organized and existing under the Laws of the State of Wisconsin, and having its principal place of business at Eau Claire, in said state, and a citizen and inhabitant of said state, humbly complains of the M. A. Phelps Lumber Company, a corporation, organized and existing under the Laws of the State of Washington, and having its principal place of business at Spokane, in said state, and a citizen, resident and inhabitant of the Eastern District, Eastern Division, in said state; and therefore, complainant complains and says:

## I.

That the complainant is now, and at all times herein mentioned has been, a corporation duly organized and existing under the Laws of the State of Wisconsin, with principal place of business at Eau Claire, Wisconsin, and that the defendant, the M. A. Phelps Lumber Company, is now, and at all times herein mentioned has been, a corporation duly organized under the laws of the State of Washington, with principal place of business at Spokane, Washington.

## II.

That said defendant is now, and at all times herein mentioned has been the owner and reputed owner and in possession of that certain property situate in Pend Oreille (formerly part of Stevens County), Washington, described as follows, to-wit:

Lots One (1), Two (2), Three (3) and Four (4), and Lots Nine (9), Ten (10), Eleven (11) and Twelve (12), of Block Two (2), and Lots Five (5), Six (6) Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12), of Block Three (3), all being of the original Townsite of Cusick, Stevens County, Washington (now Pend Oreille County), and also vacated portions of Riverside Avenue and D Street of said townsite, contiguous to said above described lots, and also Lot Two (2) of Section Thirty (30), Township Thirty-three (33) North, of Range Forty-four (44), E. W. M., Stevens County, Washington, and also that certain strip of land lying between said above described property and the bank of the Pend Oreille River.

### III.

That at the City of Spokane, Washington, on or about September 15, 1910, said complainant and said defendant entered into a contract in writing by the terms of which complainant, among other things, agreed to sell and deliver to defendant certain sawmill machinery, fixtures, fittings and supplies, and by the terms of which said defendant agreed to accept and pay for same, and a copy of which said contract is hereto annexed marked Exhibit "A" and by reference made a part hereof, and which said contract was duly approved at the main office of said McDonough Manufacturing Company at Eau Claire, Wisconsin, and that a copy of said specifications, No. 10915, in said contract described, has been delivered and is in possession of defendant.

## IV.

That by written mutual agreement of said parties, made at Spokane, Washington, on or about October 12, 1910, said agreement was altered and changed, among other things, in respect to the time and manner of making payment, and of the delivery of said machinery, and a copy of which said alteration agreement is hereto annexed, marked Exhibit "B," and by reference made part hereof.

## V.

That complainant thereafter well and faithfully delivered said material and performed all the obligations of said contract by it to be performed, and in accordance with the terms thereof, except that at the request of defendant complainant refrained from delivering to it that certain device or piece of machinery commonly known as and called the "hog," and that on account thereof defendant became and was entitled to a credit on the said contract price of the sum of two hundred eighty-four dollars (\$284.00).

## VI.

That at the instance and request of defendant complainant between January 1, 1911, and May 24, 1911, made and caused to be made changes in said machinery and fittings so agreed to be sold and delivered, and chief among which are set out in Exhibit "C," hereto annexed, and by reference made part hereof; and that complainant at defendant's request, and during said time, sold and delivered to it other and additional machinery to be shipped with said first described machinery, and to be used, and which was used, in said saw mill, the

quantity, character and value thereof, together with freight and charges thereon, are shown in Exhibit "D," hereto annexed and by reference made part hereof; and that the reasonable value of all of which said alterations and additional machinery was and is the sum of four thousand thirty-two and 97-100 dollars (\$4,032.97).

VII.

That part of said machinery covered by said original contract arrived at its destination and was unloaded by defendant after a time on or about March 15, 1911, between said time and May 25, 1911; that said delay was provided against by the terms of said contract and was caused by defendant's delay and failure to furnish complete information of certain of said machinery, and of said alterations and changes requested and ordered therein by defendant, and consisting for the most part of information concerning changes as shown in Exhibit "C," and consisting for the most part of boilers, pumps, engines, burner conveyors, saws, plans for boiler installation and engine construction; that defendant at all times herein mentioned well knew that plaintiff was not engaged in the manufacture of a part of said machinery so agreed to be sold and delivered, and particularly of that part last above described, and that it became and was necessary for complainant to order the said machinery and supplies to be manufactured by persons engaged in the manufacture thereof, and defendant well knew that the direct management and control of said factories was beyond the control of the complainant; that complainant as from time to time it received information from defendant concerning said alterations and

changes forthwith and faithfully transmitted same to the factory at which boiler and other machinery were being manufactured; that complainant is advised, and believes and therefore alleges that said manufacturers acted with reasonable promptness in the manufacture of said boilers and machinery, at all times, and also as affected by the alterations and changes ordered by said defendant, and complainant also alleges that if delay was occasioned by said manufacturers in the making of said alterations and changes that the same was beyond the control of complainant and without any fault or negligence whatsoever on its behalf.

#### VIII.

That on account of the performance by complainant of said contract, and of the alterations so made, and of the sale and delivery of said additional machinery, there became and was due and owing to complainant the sum of twenty-two thousand four hundred ninety-eight and 97-100 dollars (\$22,498.97); that said defendant has paid in money, and by way of payment of freight, the sum of twelve thousand one hundred sixteen and 10-100 dollars (\$12,116.10), and that defendant has executed and delivered to complainant its promissory notes for the sum of four thousand five hundred and 24-100 dollars (\$4,500.24), and that there became and was owing complainant on June 14th 1911, and at all times subsequent thereto a balance of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63), and payment of which said defendant has failed, neglected and refused to make.



IX.

That all of said machinery and material was sold and delivered to defendant for use in the erection of a saw mill upon that certain real property above described, and was by said defendant used in the erection of said saw mill upon said premises, and that all of said above described land is necessary for the convenient use and occupancy of said saw mill.

X.

That on August 21, 1911, the complainant, for the purpose of securing and perfecting a lien for the moneys so due it as aforesaid upon the building and lands above described, under the provisions of the laws of the State of Washington, filed for record in the office of the Auditor of said Pend Oreille County, Washington, its claim of lien therefor duly verified, and which said lien has been duly recorded in said office in Book "1" Records of Liens, Pend Oreille County, Washington, on page "13," and a copy of which is hereto annexed, marked Exhibit "E," and by reference made part hereof, and which said lien is a valid and subsisting lien upon said premises for said balance due complainant.

XI.

That the sum of seven hundred fifty dollars (\$750.00) is a reasonable sum to be allowed complainant as attorney's fees herein for the bringing and maintaining of said action in foreclosure of said lien.

And complainant prays that upon final hearing of this cause that it be ordered and decreed that complainant have judgment against defendant for the sum of five thousand eight hundred eighty-two and 63-100 dollars

(\$5,882.63), and for costs of this suit, together with the sum of seven hundred fifty dollars (\$750.00) as attorneys' fees, and that same be adjudged a lien upon the lands and premises hereinbefore described, and that said lands and premises may be sold under order and decree of this Court, and the proceeds thereof be applied to the payment of the judgment for the sum found due complainant, with costs and attorneys' fees, and that it have execution for any deficiency, and for such other general relief as to the Court may be deemed just and equitable.

To the end that complainant may obtain the relief prayed for herein, it further prays the Court to grant it process by subpoena directed to M. A. Phelps Lumber Company, a corporation, organized under the laws of the State of Washington, with principal place of business at Spokane, Washington, and a citizen, resident and inhabitant of the Eastern District of said State, defendant herein named, commanding it to appear and answer not under oath, the same being waived, all the allegations of the bill herein filed.

McCARTHY & EDGE,

*Solicitors for Complainant.*

STATE OF WASHINGTON,

County of Spokane—ss.

Personally appeared before me the undersigned authorized Joseph McCarthy, who, being first duly sworn, on oath says: That he is one of the solicitors for the above named complainant in the above cause, and makes this verification for and on its behalf, for the reason that no officer or agent of the complainant is within the State of Washington, but that such officers and agents are

without the State of Washington; that he has read the foregoing amended bill, knows the contents thereof and the same is true to the best of his knowledge, information and belief, and that he believes the matters therein contained to be true.

JOSEPH McCARTHY.

Subscribed and sworn to before me this 20th day of November, 1911.

(SEAL.)

A. A. KIRBY,

*Notary Public for the State of Washington, Residing at  
Spokane, Wash.*

EXHIBIT "A."

Spokane, Wash., Sept. 15, 1910.

McDONOUGH MANUFACTURING COMPANY.

Main Office and Works Eau Claire, Wisconsin.

Subject to strikes, accidents and other delays beyond your control, please ship in good order the following machinery, delivered F. O. B., Cusick, Wash., or factory where made, about April 1st, 1911, from date of receipt by you:

Machinery complete for single band mill with bolts and bar iron necessary for transfers, conveyors and log jacker, steam piping and two sets of saws for all machines except slasher, which shall have one set. All machinery to be of same type as Lane Lbr. Company.

Plans to be completed for your approval at Cusick if desired, all as per specifications 10915 attached.

For which we agree to pay within thirty days after date of shipment eighteen thousand seven hundred fifty and no-100 (\$18,750.00) dollars, with exchange.

The purchaser agrees to make settlement within ten days after date of shipment and to then evidence all payments due at a later date by notice bearing date of shipment and interest. In case payment is divided to be as follows :

Terms to be mutually agreed upon later before shipment.

It is agreed that title to the property mentioned above shall remain in the consignor until fully paid for in cash, and that this contract is not modified or added to by any agreement not expressly stated herein, and that a retention of the property forwarded, after thirty days from date of shipment, shall constitute a trial and acceptance, be a conclusive admission of the truth of all the representations made by or for the consignor, and void all its contracts or warranty, express or implied. The unloading of machinery when received shall constitute a waiver of any claim for damage from delay. No allowance will be made for any change in machinery without the written authority of the McDonough Manufacturing Company. It is further agreed that the purchaser shall keep the property fully insured for the benefit of the McDonough Manufacturing Company.

Ship via -----

Accepted by J. W. Hubbard, salesman for McDonough Manufacturing Company.

Subject to approval at the main office, Eau Claire, Wisconsin.

M. A. PHELPS LBR. CO.  
By M. A. PHELPS, *President*.  
In presence of

EXHIBIT "B."

No. 10915.

Terms: Freight cash on receipt of B. L.—one-half invoice price of each car within five (5) days from arrival of shipment, balance covered by notes running ninety (90) days, bearing interest at rate of seven (7) per cent; said notes to be executed and delivered within five (5) days from arrival of each shipment, and each note renewable three times, or so as to become ultimately due in one (1) year, except last car, which payments shall be made as above twenty (20) days from arrival of last car.

Shipments to begin February 15, 1911, and be completed about March 15, 1911.

McDONOUGH MFG. CO.

By J. W. HUBBARD, *President.*

M. A. PHELPS LUMBER CO.

By M. A. PHELPS.

WM. McINTYRE.

EXHIBIT "C."

Change boiler house plan from right-hand side to opposite or left-hand side mill;

Change engine from left-hand engine to right-hand engine;

Change boiler installation system from two-boiler system to four-boiler system and then back to three-boiler system;

Change 200-foot chain for log slip;

Change burner conveyor first ordered and then change back to original as ordered;

Change the direction of the motion of main conveyors; add one additional conveyor;

Change twice the size of steam openings in boilers;

Order machine or device known as "hog" omitted from shipment; also machinery for driving said device.

EXHIBIT "D."

1 extra boiler-----	\$2,918.75
1 extra steam drum-----	130.00
Extra for increasing length of breeching from 27" to 35"-----	43.00
Furnishing pump for three boilers instead of for 2 boilers, as originally contracted for. Our letter 12/9/10, yours 12/17/10. Shipped C. & N. W., Car No. 52727, 4/20/11-----	46.13

A20657.

Refuse conveyor for lath room. Your letter 3/30/11, ours 4/10/11.

1 shaft 2 3/16x 6' K. S-----	\$ 7.50
1 pulley 40x7x2 3/16 K. S---	25.45
1 B. pinion No. 73, 2 3/16"	
B. K. S-----	8.64
1 set collar 2 3/16-----	1.80
2 No. 12 F. boxes-----	7.60
1 shaft 2 7/16x38" K. S-----	4.75
1 bevel gear No. 72, 2 7/16"	
B. K. S-----	55.20
1 9 T. No. 104 Spkt. 2 7/16"	
B. K. S-----	14.80
1 set collar 2 7/16-----	2.00
2 No. 16 F. boxes-----	9.20

1 shaft 1 15/16x2' 6"-----	2.63	
1 tail idler K-11, 1 15/16 K. S	14.80	
2 set collars 1 15/16-----	2.80	
2 No. 10 F. boxes-----	7.20	
80' of No. 104 Chain-----		41.60
1 pulley 16x7x2 15/16 K. S--	7.45	

-----  
\$171.82—60% 68.73

Freight on above E. C. to Cusick, 1912 lbs. at--		
\$1.50 -----		28.68

Shipped C. & N. W. Car No. 52727, 4/20/11.

No. 20387.

Additional log chain dogs and return idler.

Your letter 12/31/10, ours 3/1/11.

75' of 1 1/4x8" R. L. chain--		71.25
9 cast steel dogs at \$7.20----		64.80
1 shaft 2 7/16x3'-----	4.50	
2 No. 40 solid boxes-----	5.60	

-----  
\$ 10.10—60% 4.04

1 5 T. No. 22 flanged idler--		18.90
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-----  
\$3,435.88

Amount carried forward-----\$3,435.88

Fr. on above, E. C. to Cusick, 2240 lbs. at \$1.50		33.60
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Shipped 3/18/11, N. P. car No. 85658 and N.

P. car No. 85744, 1/23/11.

No. 20480.

Filing room engine. Your letter 3/16/11.

1 8 H. P. V. engine-----		91.60
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14            *M. A. Phelps Lumber Company v.*

Frts. on same, Kalamazoo to Eau C., 750 lbs.,  
66 cts----- 4.95

Eau C. to Cusick, 750 lbs. at \$1.50----- 11.25

Shipped N. P. car No. 85658, 3/18/11.

1 nigger bar complete sides, 1"x7 fillers for  
2 3/4" tooth----- 129.80

Frts. on above E. C. to Cusick, 860 lbs. at \$1.00.

Shipped N. P. car No. 85658, 3/18/11----- 12.90

No. 20558.

1 B. box No. 24, 3 7/8" (McInture's letter,  
2/28/11) ----- 5.90

Frts. on above E. C. to Cusick. Shipped N. P.

car No. 85658, 3/18/11----- 2.25

No. 20659.

Boiler conveyer pan, J. R. Bond's letter  
2/13/11, ours 2/21/11, yours 2/16/11.

1 extra length conveyer pan, shipped N. P. car  
No. 85658, 3/18/11----- 40.50

No. 20680.

Your letter 2/16/11.

8 steel cleats No. 181 at \$3.60----- 28.80

Frts. on 136 lbs. at \$1.50----- 2.84

Shipped C. & N. W. car No. 52727.

No. 20355.

Sec. 136 idler and tightener (your letter  
3/16/11) on account burner conveyer being on  
angle.

2 shafts 2 7/16x3'-----\$ 9.00

2 D. B. pulleys, 24x10 1/2x

2 7/16 K. O.----- 44.12

4 upright boxes No. 16----- 19.20



*McDonough Manufacturing Company.*      15

4 upright set collars, 2 7/16--	8.00	
	\$ 80.32—60%	32.13
Frts. on above E. C. to Cusick, 728 lbs. at \$1.50		11.70
Shipped N. P. car No. 55456, 2/28/11.		
1 band saw, 44' 6", 12" wide, 14 Ga-----		89.00
Shipped C. & N. W. car No. 62727.		
Frts. on same E. C. to Cusick, 273 lbs. at \$1.50_		4.10
No. 20679.		
6 S. set collars 2 7/16-----	\$ 12.00	
1 S. set collar 2 3/16-----	1.80	
1 S. set collar 2 11/16-----	2.20	
1 S. set collar 2 15/16-----	2.40	
1 S. set collar 2 7/8"-----	2.40	
	\$ 20.80—60%	8.32
Frts. on above E. C. to Cusick, 100 lbs. at \$1.50		1.50
Your wire 3rd inst.		
30' of No. 104 and 104-C chain-----		17.40
30' of No. 110 chain-----		24.00
81 links No. 75 chain-----		2.20
4 H-1 attachments -----		.50
Frts. on above E. C. to Cusick, 660 lbs. at \$1.50_		9.90
		\$4,000.72
Amount carried forward-----		\$4,000.72
Shipped C. & N. W. car No. 52727, 4/20/11.		
Your wire 4/18/11.		
81 links No. 75 link belt chain-----		2.20
4 attachments A-1-----		.50
Frts. on above E. C. to Cusick, 50 lbs. at \$1.50--		.75

Shipped C. & N. W. car No. 52727.

60' of 7/8x6" R. L. chain----- 28.80

Total -----\$4,032.97

EXHIBIT "E."

McDONOUGH MAUNUFACTURING COMPANY,  
a Corporation,

*Claimant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corpora-  
tion.

NOTICE OF CLAIM OF LIEN.

NOTICE IS HEREBY GIVEN that on January 30th, 1911, the above named claimant, the McDonough Manufacturing Company, a corporation organized under the laws of the State of Wisconsin, commenced the furnishing of material, consisting of machinery complete for single band mill, with bolts, bar iron necessary for transfers, conveyors and log jacker, steam piping and two sets of saws, and other like machinery, iron fittings and fixtures, at the request of and for the use and benefit of the said M. A. Phelps Lumber Company, a corporation organized under the laws of the State of Washington, with principal place of business at Spokane, Washington, upon that certain land and premises situated in Pend Oreille County, State of Washington, and described as lots one (1), two (2), three (3) and four (4), and lots nine (9), ten (10), eleven (11) and twelve (12) of block two (2), and lots five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12) of block three (3), all being of the original town-

site of Cusick, Stevens County, Washington (now Pend Oreille County), and also vacated portions of Riverside avenue and D street of said townsite, contiguous to said above described lots, and also lot two (2) of section thirty (30), township thirty-three (33) North, of Range forty-four (44) of E. W. M., Stevens County, Washington, and also that certain strip of land lying between said above described property and the bank of the Pend Oreille River, and which said material was to be used, and all of which was used upon said premises in the erection thereon of a saw mill, and all of which said tract is necessary and convenient for the use of said building and improvement, and all of which land is in Pend Oreille (formerly part of Stevens) County, Washington.

That the said M. A. Phelps Lumber Company is now, and at all times herein mentioned has been the owner and reputed owner of said land, building and premises;

That the furnishing of said material ceased on May 24th, 1911;

That the reasonable value and agreed price of said material so sold and delivered was and is the sum of twenty-two thousand four hundred ninety-eight and 97-100 dollars (\$22,498.97);

That the sum of twelve thousand one hundred sixteen and 10-100 dollars (\$12,116.10) has been paid in money and in just credits allowed to said M. A. Phelps Lumber Company, and that for the sum of four thousand five hundred and 24-100 dollars (\$4,500.24) thereof said corporation has executed its five certain promissory notes, dated respectively March 10th, 1911; May 17th, 1911;

May 24th, 1911; April 20th, 1911, and May 19th, 1911, and made payable to claimant, and delivered same to claimant, and that there remains due and owing to claimant on account of said sale and delivery, and in addition to said promissory notes, the sum of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63), and upon all of which said latter sum interest is due from May 24th, 1911.

That claimant claims a lien upon said building, land and premises for the sum of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63), with interest thereon from May 24th, 1911, together with claimant's cost of preparing and filing this lien, and costs and disbursements and attorney's fees and foreclosing the same.

McDONOUGH MANUFACTURING COMPANY,  
a Corporation.

By J. W. HUBBARD, *President.*

STATE OF WISCONSIN,  
County of Eau Claire—ss.

J. W. Hubbard, being first duly sworn, on oath says: That he is the President of the above named corporation, and makes this verification for and on its behalf; that he has read the foregoing claim, knows its contents, and that he believes the claim to be just.

J. W. HUBBARD.

Subscribed and sworn to before me this 14th day of August, 1911.

(SEAL.)

JOSEPH C. CULVER,

*Notary Public for Wisconsin, Residing at Eau Claire.*

Notary Public, Eau Claire County, Wis.

My commission expires March 7, 1915.

Endorsement: Service of the within amended bill is hereby admitted, and a receipt of a full, true and correct copy thereof is hereby acknowledged this 21st day of November, 1911.

(Signed) DANSON & WILLIAMS,  
*Attorneys for Defendant.*

Amended bill. Filed November 22, 1911.

FRANK C. NASH, *Clerk.*

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IN EQUITY.

*In the Circuit Court of the United States for the Eastern  
District of Washington, Eastern Division.*

McDONOUGH MANUFACTURING COMPANY,  
*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corpora-  
tion,

*Defendant.*

DEMURRER TO AMENDED BILL

The demurrer of M. A. Phelps Lumber Company, a corporation, to the amended bill of complaint.

And now comes the defendant, M. A. Phelps Lumber Company, a corporation, and not confessing any of the matters in the bill to be true, demurs to the bill herein filed and says: That the same does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against this defendant.

WHEREFORE the defendant prays the judgment of

this Court whether he shall further answer and that he be dismissed with costs.

DANSON, WILLIAMS & DANSON,  
*Solicitors for M. A. Phelps Lumber Company, a Corporation.*

I, Jas. A. Williams, one of the solicitors for defendant in the above, do hereby certify that the foregoing demurrer, in my opinion, is well founded in law.

JAS. A. WILLIAMS.

I, M. A. Phelps, President of the defendant, M. A. Phelps Lumber Company, a corporation, in above cause, being duly sworn, do say: That the foregoing demurrer is not interposed for delay.

M. A. PHELPS.

Subscribed and sworn to before me this 29th day of November, 1911.

(SEAL) O. G. FOLLEVAAG,  
*Notary Public for the State of Washington, Residing at Spokane.*

Endorsements: Received a copy of the within demurrer at Spokane, Wash., this 29th day of November, 1911.

(Signed) McCARTHY & EDGE,  
*Attorneys for Plaintiff.*

Demurrer to Amended Bill of Complaint.

Filed November 9th, 1911.

FRANK C. NASH, *Clerk.*

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AND AFTERWARDS, to-wit, on the 4th day of December, 1911, the same being the fifty-fourth day of the regular September, 1911, term of said Court, Present: Honorable FRANK H. RUDKIN, United States Dis-

trict Judge for the Eastern District of Washington, presiding, the following proceedings were had, to-wit:

No. 1577.

*In the Circuit Court of the United States, Eastern District of Washington, Eastern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation.

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

ORDER OVERRULING DEMURRER TO  
AMENDED BILL OF COMPLAINT.

Now, at this day, the demurrer of the defendant herein to the amended bill of complaint of the complainant, came on regularly for hearing, the complainant appearing by its solicitors, McCarthy & Edge, and the defendant appearing by its solicitors, Danson, Williams & Danson, and after argument of respective counsel, the Court being fully advised in the premises, it is ORDERED that said demurrer to said amended bill of complaint be, and the same is hereby, overruled.

(Signed) FRANK H. RUDKIN,

*Judge.*

Entered Circuit Court Journal Volume 7, at page 130.

*United States of America, Circuit Court of the United States, Ninth Judicial Circuit, Eastern District of Washington.*

IN EQUITY.

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*The President of the United States of America, Greeting:*  
*To M. A. Phelps Lumber Company, a Corporation:*  
YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the court room of said Court, in the City of Spokane, Washington, on the second day of October, 1911, to answer a Bill of Complaint filed against you in said Court by the McDONOUGH MANUFACTURING COMPANY, a coproration, a citizen of the State of Wisconsin, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

WITNESS, the Honorable EDWARD DOUGLASS WRITE, Chief Justice of the United States, and the seal of the said Circuit Court, the 9th day of September, 1911, and the 136th year of the Independence of the United States of America.

(SEAL)

FRANK C. NASH, *Clerk.*

MEMORANDUM PURSUANT TO RULE 12.

SUPREME COURT, U. S.

YOU ARE HEREBY REQUIRED to enter your appearance in the above-mentioned suit on or before the first Monday of October, 1911, next, at the Clerk's Office of said Court, pursuant to said Bill, otherwise the said Bill will be taken pro confesso.

FRANK C. NASH, *Clerk.*



UNITED STATES OF AMERICA,  
Eastern District of Washington—ss.

I HEREBY CERTIFY, That I have served the within writ by delivering to and leaving a true copy thereof with M. A. Phelps, president of the M. A. Phelps Lumber Company, personally, in Spokane, Washington, on the 9th day of September, 1911.

(SEAL) (Signed) W. H. HALTEMAN,  
*United States Marshal.*  
(Signed) By R. D. McCULLY,  
*Deputy.*

Ret. Sept. 11, 1911.

Fees, \$3.06.

Endorsements: Subpoena in equity.

Filed September 11, 1911.

FRANK C. NASH, *Clerk.*

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No. -----.

*In the Circuit Court of the United States for the Eastern  
District of Washington, Eastern Division.*

IN EQUITY.

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corpor-  
ation,

*Defendant.*

AMENDED ANSWER AND CROSS COMPLAINT.

The defendant, M. A. Phelps Lumber Company, re-  
serving all manner of exceptions that may be had to the

uncertainties and imperfections of the amended bill of complaint, comes and answers so much thereof as it is advised it is material to be answered, and says:

1. Answering paragraph 1 of said amended bill of complaint, this defendant admits that it is a corporation as alleged in said amended bill in equity, but alleges that it has no knowledge or information sufficient to form a belief as to whether the said complainant is incorporated under the laws of the State of Wisconsin, or as to whether the said complainant has its principal place of business at Eau Claire, Wisconsin, and demands strict proof of the said allegations.

2. Admits paragraph 2 of the amended bill of complaint.

3. Answering paragraph 3 of said amended bill, this defendant denies that at the City of Spokane, Washington, or at any other place, on or about September 15, 1910, or at any other time, complainant and this defendant entered into any contract in writing of any nature or kind other than as hereinafter admitted or alleged, by the terms of which complainant agreed to sell or deliver to defendants sawmill machinery, fixtures, fittings, supplies, or any other property, or which defendant agreed to accept or pay for same, but this defendant does admit that it signed a document, of which Exhibit A attached to the complainant's amended bill is a copy except that the words, "All as per specifications No. 10915 attached," were not in said writing signed by defendant.

4. Answering paragraph 4 of said amended bill of complaint, this defendant denies that by mutual agree-

ment or otherwise on or about October 12, 1910, or at any other time, said alleged agreement or any agreement was altered or changed in any respect, but this defendant admits that on or about said date certain general specifications were prepared by said McDonough Manufacturing Company and included in such specifications there was the writing as shown by Exhibit B attached to the amended bill, and that said general specifications were, about November 4, 1910, signed by both complainant and this defendant, such specifications being for the construction of a complete single band saw mill for this defendant, as provided for by Exhibit A attached to the amended bill, and to be furnished for the consideration therein mentioned.

5. Answering paragraph 5 of said amended bill of complaint, this defendant denies that complainant thereafter well and faithfully, or otherwise, delivered said materials or performed all or any of the obligations of the said contract by it to be performed in accordance with the terms thereof, or at all, except that this defendant admits that complainant did furnish a portion of the said machinery and did in part perform its contract.

6. Answering paragraph 6 of the said amended bill of complaint, this defendant denies that at defendant's instance or request, or at all, complainant, between January 1, 1911, and May 24, 1911, or at any other time, made or caused to be made changes in said machinery or fittings of any nature or kind, as shown by Exhibit C attached to the amended bill of complaint, or that complainant at defendant's request, or at all, during said time, or at any time, sold or delivered to defendant

other or additional machinery to be shipped with said first described machinery, or otherwise, or which was used in said sawmill, or that the quantity, character, or value thereof, with the freight and charges thereon, are as shown by Exhibit B attached to the amended bill, or that the reasonable value of said alleged alterations and additional machinery was or is the sum of \$4032.97, or any other sum, except that this defendant admits that complainant did furnish one extra boiler and installed the three boilers of the reasonable value of \$2675.00, and is entitled to an extra on account of a change in the pump for the boilers of \$46.13, and further furnished extra one nigger bar of the reasonable value delivered of \$87.90, and one extra saw of the reasonable value of \$93.10.

7. Answering paragraph 7 of said amended bill of complaint, this defendant admits that part of the said machinery arrived at the destination and was unloaded after March 15, 1911, and between said date and May 25, 1911, but denies that said delay or any delay was provided against by the terms of said contract or any contract, or that such delay was caused by defendant's delay or failure to furnish complete or any information of certain of said machinery or of said or any alterations or changes requested or ordered by defendant, or that any of such delay was occasioned by any other reason than the default of said complainant, and further denies that any changes were made as shown by Exhibit C or otherwise, except this defendant admits that it did order from complainant one extra boiler and denies that this defendant at all or any time knew that com-

plainant was not engaged in the manufacture of a part of said machinery and denies that defendant had any knowledge that complainant was not engaged in the manufacture of boilers, pumps, engines, burner conveyors, saws, or plans, and denies that this defendant had any knowledge that complainant was dependent upon others to furnish any of said machineries or supplies or that this defendant had any knowledge or notice that the direct management or conduct of the factories manufacturing any of such machinery was beyond the control of complainant, and alleges that this defendant has no knowledge or information sufficient to form a belief as to whether complainant from time to time, or at all, when it received any information from defendant concerning any alleged alterations or changes, forthwith, or at all, faithfully transmitted same or any instructions to the factories at which the boiler or any other machinery was being manufactured, but demands strict proof of all of such allegations; that this defendant denies that any of such manufacturers acted with reasonable or any promptness in the manufacture of said boilers, at all or at any times, or as affected by the alterations or changes acted with any such promptness, and denies that any delay occasioned by any of said manufacturers in making of any alleged alterations or changes was beyond the control of complainant or without any failure or neglect on its behalf.

8. Answering paragraph 8 of said amended bill, this defendant denies that on account of the performance of said or any contract or of any alleged alterations so made or of the sale and delivery of said alleged additional

machinery, or otherwise, there became due or owing to complainant the sum of \$22,498.97, or any sum in excess of \$17,602.13, and denies that there remains a balance of \$5,882.63 or any other sum whatsoever.

9. Answering paragraph 10 of said amended bill, this defendant alleges that it has no knowledge or information sufficient to form a belief as to whether on August 21, 1911, or at any other time, the said complainant filed any lien or claim of lien in the office of the Auditor of Pend Oreille County, Washington, and denies that there is any balance remaining due complainant.

10. Answering paragraph 11 of said amended bill, this defendant denies that the sum of \$750.00 or any other sum is a reasonable sum to be allowed complainant as attorney's fee herein.

The defendant, M. A. Phelps Lumber Company, a corporation duly organized and existing under the laws of the State of Washington, with its principal place of business in Spokane, said State, and a citizen and inhabitant of said State, further answering the said amended bill of complaint of the complainant, and for affirmative answer and by way of cross-complaint, complains of the said complainant, McDonough Manufacturing Company, and says:

1. That this defendant is now and was at all of the dates herein mentioned a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Spokane, in said State, and the said complainant, McDonough Manufacturing Company, was a foreign corporation.

2. That prior to September 15, 1910, this defendant entered into negotiations with the complainant, McDonough Manufacturing Company, for the furnishing to this defendant of all the machinery complete for a single band sawmill, with all bolts and bar iron necessary for the transfers, conveyors and log jacker, also for all steam piping, two sets of saws for all machinery except slasher and one set of saws for the slasher, all of said machinery to be of the same type as had been previously installed by said McDonough Manufacturing Company in the Lane Mill Company's mill at Harrison, Idaho, and also all necessary valves and piping necessary in connecting up all the water and steam appliances of every kind, including all exhausts, whistles and blow-off pipes, all valves to be of approved make, also to include all necessary valves and piping for disconnecting one boiler from the others, so that the boilers could be used independently, and to furnish all plans and details for the installation of said machinery and all metal of every nature and kind for the completion of the mill except nails and spikes, all boxes to be furnished planed at the back side thereof.

3. That on September 15, 1910, complainant and this defendant had not been able to work out the details in full of the contract nor to agree upon all the terms and conditions and it was agreed orally between complainant and defendant that thereafter as soon as the details could be worked out and complainant and this defendant reach a complete understanding, a formal written contract would be prepared in writing and executed by both complainant and defendant. That for the

purpose of evidencing such portions as had already been agreed upon and none other, a memorandum in writing should be signed by the parties and, pursuant thereto, a preliminary memorandum or contract was on said day entered into between complainant and this defendant, as shown by Exhibit A attached to complainant's bill of complaint except that the words, "all as per specifications No. 10915 attached," were not included therein. That a copy of said written memorandum was delivered to complainant and is now in its possession. That at said time it was orally agreed that as soon as the parties could come to an understanding as to all matters involved in the contract, a formal written contract should be drawn and executed so evidencing the same.

4. That thereafter and on or about Nov. 4, 1910, complainant and this defendant did agree upon the details and terms of said contract whereby the said complainant agreed to furnish all the material and to perform all of the things and conditions mentioned in paragraph 2 of this cross complaint for the consideration of \$18,750.00, to be paid complainant, and that the said plans and specifications and the details for the installation of the machinery should be furnished forthwith and that the contract complete should be performed within a reasonable time and at a date not later than March 15, 1911, and that there should be included in the machinery furnished, should defendant desire, and delivered within the same time, but at an extra charge, one or two extra boilers with all fittings and connections.



5. That the said agreement was entirely oral except as shown by said preliminary agreement hereinbefore mentioned and certain general specifications in which was included the provisions shown by Exhibit B attached to and made a part of the amended bill of complaint, a copy of which general specifications and said Exhibit B above referred to was delivered to and is now in the possession of complainant, and also except as shown by letters written by complainant to this defendant and letters written by this defendant to complainant; that the originals or copies of said letters were delivered to complainant and are now in complainant's possession.

6. That thereafter and on or about December 1, 1910, defendant orally contracted with complainant to furnish one extra boiler, together with the connections, fittings, casings and all other equipment necessary to change the installation of boilers in said mill from a battery of two to a battery of three, and employed complainant to install all three of said boilers and agreed to pay therefor \$750.00 for the installation and setting of said boilers and the reasonable value of such extra boiler, which reasonable value was the sum of \$1925.00. That complainant agreed to furnish and install the said boilers within a reasonable time and not later than March 15, 1911.

7. That a reasonable time for complainant to have fully performed its contract would have been not to exceed three months.

8. That this defendant was at said time engaged in a general lumber and timber business and was plan-

ning, with said sawmill so to be installed as aforesaid with machinery to be furnished by complainant to start the manufacture of lumber with said mill on or before May 1, 1911, the said sawmill to be so erected near Cusick, Washington, and had complainant performed its said contract, the said mill would have been fully completed and ready for operation on or before said May 1, 1911, and said mill would have had a capacity of 55,000 feet of lumber day shift and 50,000 feet of lumber night shift. That in order to prepare for operating said mill in 1911 it was necessary that defendant should immediately start, after the making of said contract with the complainant, to procure logs from its own lands and to purchase from others and to have the same delivered at its mill in the spring of 1911, when the same could be driven to its said mill on floatable streams; that unless the logs were so driven during the spring season they could not be delivered later in the season so that they could be manufactured with profit into lumber; that in order to manufacture lumber properly in the vicinity in which said mill is located it is necessary that the same be cut and become seasoned before placing the same on the market, and at the place where said mill was erected, the season for cutting logs into lumber is from about the 1st day of March to the 15th day of September; that unless the lumber is cut before the 15th of September it cannot be seasoned so as to be marketed that year or prior to June 1st of the succeeding year, and any lumber cut after said time must be carried over until such time in the following year and will be greatly damaged by reason of bluing and will greatly deteriorate in value.

9. That in anticipation of the performance of said contract by complainant and of having said mill ready for operation by May 1st, defendant forthwith, upon the making of said contract, proceeded to obtain logs for its said mill and had the same driven to its said mill or near such place to the amount of 6,000,000 feet on or before May 1, 1911, all of which would have been cut and manufactured into lumber during the said season of 1911 had the complainant complied with its said contract; but by reason of the default of complainant, as hereinafter alleged, this defendant was only able to cut into lumber, during the season, about 2,100,000 feet of said logs, and as a result of complainant's default, the remainder of said logs, to-wit, 3,900,000 feet, were left to be carried over by defendant until the commencement of the season for operating said mill of 1912, and to about March 1, 1912; that in the said logs which defendant must carry over, it has invested in the purchase thereof from others and in the expense of cutting and carrying the same to or near defendant's said mill more than \$20,000.00 and defendant has lost the interest on said investment for six months to defendant's damage in the sum of \$600.00; that said logs will deteriorate in value, by reason of being held waiting to be sawed, from becoming water soaked and sinking in the river or escaping, to the amount of \$2500.00, all of which damage defendant will suffer by reason of the said default of complainant.

10. That the market for lumber in the fall of 1910, when the said contract was made, was good, and lumber at the prices which could then be obtained could be

manufactured and sold at a large profit and the said prices and demand for lumber continued until in the summer of 1911, but immediately thereafter fell off at least \$2.00 per thousand feet, and at all times since the market price for lumber has been so depreciated; that complainant knew that the market price of lumber was liable to fluctuate and go down and that it was the intention, at the time said contract was made, by reason of the favorable prices, to contract its mill run of said lumber for the season of 1911 before starting the mill on May 1, 1911, all of which was known by complainant at the time the said contract was made; that by reason of the default of complainant as hereinafter alleged, this defendant was not able to begin sawing lumber until about July 15, 1911, and during the sawing season then was only able to saw 2,100,000 of said logs, while, had the contract been performed, the entire 6,000,000 feet could have been sawed, and defendant was unable to contract its said lumber by reason of being unable to start the operation of its said mill prior to July 15, 1911, and the uncertainty as to whether it would be able to operate at all during the season of 1911, and by reason of the said facts, lost a profit on the said lumber which it would have manufactured from said logs which would have amounted to 7,500,000 feet, to-wit: damages in the sum of \$15,000.00; that the said decrease in the market value of lumber took place after the time that defendant would have contracted and sold its said mill cut had complainant performed its contract and before defendant could have made its contracts after knowing that complainant would complete its contract in time

so that a partial run could be made during the season of 1911.

11. That the complainant failed, neglected and refused to perform its said contract or to furnish the mills or machinery or to install the said boilers within a reasonable time, or within the time fixed by the contract, and did not complete the furnishing of the machinery which it actually did furnish until May 24, 1911, and did not commence to install the said boiler until about June 15, 1911, and after the completion of the furnishing of such part of said machinery as complainant did furnish, it necessarily required forty-five days to get the machinery installed and the mill in operation, while, had the said machinery been furnished as provided by the contract, the mill would have been ready for operation by May 1, 1911, when, by reason of the said default of complainant, it was not ready until July 15, 1911.

12. That complainant, in performing its said contract so far as it was performed, would ship and furnish to this defendant odds and ends of said machinery at the same time, but without completing the shipment of any particular class of machinery covered by the contract and which was to be installed, or furnish to defendant machinery in the order in which it would be first needed or could be used in installing the same, and as a result thereof, much of said machinery would be received with many essential parts thereof lacking, and defendant, in attempting to install said machinery and after going to great expense in so doing, would find that said machinery could not be installed at said time by reason of the absence of parts thereof which com-

plainant had neglected and failed to send and, as a result thereof, defendant was put to much extra expense in the hire of help for the installation of such machinery and inability to use the said machinery by reason of the said default of complainant, and, as a result thereof, suffered damage in the sum of \$1000.00, the items of such parts not furnished or where furnished incomplete, so far as defendant can furnish same at this time, being shown by Exhibit 1 hereto attached and made a part hereof, and Exhibit 2a to 2i.

13. That notwithstanding the said contract as aforesaid, the complainant failed, neglected and refused to furnish a large portion of the machinery and equipment contracted for, consisting of shafts, key-seating slasher shaft, bar iron, bolts, washers, steam pipe and water appliances and fittings, and other incidentals necessary in order to complete the said machinery, exhaust, whistles, blow-off pipes and necessary valves and which were included in the contract, and this defendant, in order to obtain same and to complete said contract, was required to purchase elsewhere and to cut, manufacture and fit same, and this defendant further made certain advances to complainant through its representatives, for which it has not received credit, the entire items mentioned in this paragraph aggregating \$2400.00 after deducting all credits, a statement of said items, so far as defendant can furnish same at this time, being shown by Exhibit 2, a to i, hereto attached and made a part hereof.

14. That complainant failed and neglected to furnish said boxes planed at the back side as provided by

the contract, and the difference between the values as furnished and the boxes planed as provided by the contract was the sum of \$100.00.

15. That complainant failed, neglected and refused to complete its contract or to furnish certain of the materials called for thereby, consisting of iron for log haul conveyors and other conveyors and transfers included in said mill, also refuse conveyors for the cut-off saw, of which the reasonable value was \$650.00, and the equipment for the filing room was not completed in that the centering mandrel of the reasonable value of \$25.00 was not furnished; that the steam pipes furnished had not been threaded or cut in the proper lengths, and this defendant necessarily incurred expense in the sum of \$300.00 in remedying said defects; that the band wheel furnished by complainant was in a defective condition, the spokes thereof being loose and untrue and the circumference thereof being untrue, rendering the same unsafe for use, and of the value of \$175.00 less than provided by the contract, and defendant necessarily incurred said amount in expense in correcting such defect.

16. That complainant, at the time said contract was entered into, had full knowledge and notice of all of the facts stated in this cross complaint and of the purpose which defendant had in the constructing of said sawmill, when defendant planned to use the same, and of all of the damages herein alleged which would accrue to defendant as a result of a breach of said contract, and

a reasonable time for the furnishing of any extras which complainant may have furnished after being ordered by defendant was not to exceed thirty days from the time of such order, and had complainant performed its contract said mill would have been fully ready for operation by May 1, 1911.

17. That through the said defaults of complainant this defendant lost the use of its said property and its said mill for the period of two and one-half months, the reasonable value of which was the sum of \$60.00 a day, all to this defendant's damage in the sum of \$3750.00; that this defendant suffered damage by being unable to manufacture and market its lumber as above alleged in the sum of \$15,000.00; suffered damages in the sum of \$600.00 by reason of being compelled to carry over 3,900,000 feet of saw logs until the spring of 1912; suffered and will suffer damages in the sum of \$2500.00 by reason of depreciation, deterioration and loss of saw logs which must be carried over until the spring of 1912; suffered damages in the sum of \$1000.00 by reason of the complainant furnishing the machinery that was furnished in a defective and incomplete condition, and the extra expense which defendant incurred by reason thereof; suffered damages in the sum of \$300.00 for the failure of complainant to furnish plans and details; is entitled to additional credit and suffered damages in the sum of \$2400.00 by reason of the failure of complainant to furnish certain portions of machinery contracted for and the items referred to in paragraph 13 above; suffered damages in the sum of \$100.00 by rea-



son of the failure of complainant to plane the back side of the boxing; is entitled to an additional credit and suffered damages in the sum of \$1150.00 on account of the failure of complainant to furnish the items mentioned in paragraph 15 above and the expense incurred by defendant for the items therein mentioned; all to defendant's damage and for which it is entitled to a credit herein in the sum of \$26,800.00.

Having thus made full answer to all matters and things contained in the amended bill, this defendant prays to be dismissed hence with its costs in this behalf incurred.

This defendant further prays that upon final hearing of this cause, it be ordered and decreed that there is due and owing to this defendant, over and above any balance remaining due complainant under its said contract, the sum of \$15,000.00, and that this defendant have judgment against complainant for the said sum, and for costs of suit.

To the end that defendant may obtain the relief prayed for in its said cross complaint, defendant further prays the Court to grant it process by subpoena directed to the said complainant, McDonough Manufacturing Company, a corporation, commanding it to appear and answer, not under oath, the same being waived, all the allegations of the cross complaint herein.

DANSON, WILLIAMS & DANSON,  
*Attorneys for Defendant.*

UNITED STATES OF AMERICA,

State of Washington,

County of Spokane—ss.

Personally appeared before me, the undersigned, M. A. Phelps, who being first duly sworn, on oath says: That he is the President of M. A. PHELPS LUMBER COMPANY, a corporation, defendant above named, and makes this verification for and on its behalf; that he has read the foregoing answer and cross complaint, knows the contents thereof and the same is true to the best of his knowledge, information and belief, and he believes the matters therein contained to be true.

M. A. PHELPS.

Subscribed and sworn to before me this 17th day of February, 1912.

(SEAL)

JAS. A. WILLIAMS,  
*Notary Public for the State of Washington, Residing at  
Spokane.*

EXHIBIT 1.

---

Date of Receipt of Machinery from the McDonough  
Manufacturing Company.

Edger, February 21, March 30.

Conveyor for burner, February 4, February 21, March 9  
and March 30.

Trimmer, February 21 and March 9th

Slasher, February 21st, February 4th and March 30th.

Log Deck Apparatus, February 4th, February 21st.

Nigger, March 9th and March 30th.

Kicker, February 4th and March 9th.

Steeple top transfer, February 21st, March 30th.

First set live rolls, February 21st, March 9th.

Transfer to edger, February 21st, March 30th.

Second set live rolls, February 21st and March 9th.

Log Jacker, February 4th, February 21st and March 30th.

Boiler room conveyor, February 4th and March 30th.

Saw conveyor, February 4th, March 9th and March 30th.

Hog Conveyor, February 4th, Feb. 21st, March 9th and March 30th.

Lath room conveyor, February 4th, March 9th and March 30th.

Lath mill chain drive, February 21st, March 9th and March 30th.

Engine, April 30th.

Boilers, April 25th, May 10th and May 24th.

The parts lacking and which were supplied by defendant is as shown by Exhibit 2a.

These dates were the dates that the freight was paid, which was the time that the several cars passed Rathdrum, Idaho. The date of arrival at Cusick would be from one to three days later.

*Material still lacking to complete contract.*

Iron for inside of log slip; Iron for log deck; Iron for main conveyor; Iron for boiler conveyor; Iron for conveyor to boilers; Iron for lath mill conveyor; Refuse conveyor for swing cut-off saw. Part of the conveyor chains arrived in the last car of boiler material.

## EXHIBIT 2a.

Labor and Material furnished on account of the Machinery Contract with the McDonough Manufacturing Company, as per following statement made by Mr. J. R. Bond.

1911

July 25

Swing shaft for lath tightener, 4 U Bolts_	\$ 1.60
1 Iron bale for same_	1.00
For Bolter tightener, 4 U Bolts_	1.60
1 Iron bale _	1.00
1 Lever and connections for lath mill storage chain _	6.00
4 U Bolts for tightener of the log haul_	1.60
1 Controlling lever for same_	1.50
Counter balance for live skids, rear skids_	2.00
Front skids _	2.00
Lever for first set of live rolls_	5.00
Shotgun feed lever connections_	12.00
Ring to support valves_	4.00
Supposed extra work for setting angle plate on account of its not being planed on back side _	11.00
Adjustment on edger tightener box_	3.00
4 U Bolts for edger tightener_	1.60
4 U Bolts for tightener for lath mill_	1.60
Lever on steeple top transfer drive_	6.00
Work of setting boxes, caused by being made out of line_	2.00
Lever on slasher chain drive_	4.00
Adjustment on trimmer tightener boxes_	1.50

4 U Bolts -----	1.60
Swing shaft for trimmer tightener-----	1.00
2 Swing shafts -----	1.75
8 Eye Bolts -----	3.20
Slasher tightener lever for throwing second set live rolls in and out of gear-----	5.00
Labor smoothing up gears of live rolls so that they would run -----	25.00
Connections for nigger lever-----	8.00
Changing blocks on carriage-----	15.75
Fixing trimmer so that saws would go on--	12.00
Fixing lath bolter so that saws would go on	9.00
Fixing edger -----	17.50
24 Tightener rods -----	12.00
7 Tightener rods on large tightener-----	3.50
Extra work setting slasher boxes caused by not being planed on back side-----	18.50
Lengthening key seat in slasher counter---	4.75
Smoothing up log jacker pinions-----	5.50
Cutting out and leveling up for log jacker on account of back of boxes not being planed	4.75

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40 Bolts 1/2x10 1/2" ----	}	50/10/5%	\$ 3.42	
4 Bolts 5/8x25" ----			.92	
24 Bolts 5/8x19" ----			4.44	
3 Bolts 5/8x23" ----			1.08	
24 Bolts 1/2x15 1/2" ----			2.67	
14 Bolts 1/2x19" ----			1.78	
24 Bolts 1/2x15 1/2" ----			2.67	
6 Bolts 3/8x 6" ----			.23	
4 Bolts 3/8x 6" ----			.15	
			<hr/>	
			\$17.36	7.43

Forward ----- \$226.23

*Statement made by Mr. J. R. Bond—Continued.*

Forward -----			\$226.23	
Sawing off end of deck skids-----				4.25
20 Log Screws 1/2x4" -	}	70%	\$ 1.11	
6 Bolts 5/8x13 1/2" ----			1.05	
6 Bolts 5/8x16" ----			1.20	
6 Bolts 5/8x17 1/2" ----			1.29	
			<hr/>	
			\$ 4.65	.14
5 Bolts 5/8x35 1/2" ----	}	50/10/5%	\$ 1.55	
1 Bolt 5/8x45 1/2" ----			.39	
12 Bolts 5/8x64 3/4" ----			6.39	
2 Bolts 5/8x51" ----			.86	
2 Bolts 5/8x38" ----			.66	
48 Bolts 1/2x14" ----			4.85	
			<hr/>	
			\$14.70	6.29

Labor on the rear edger table -----		31.00	
2 Truss rods and lugs -----		12.00	
1 Hog chain -----		6.50	
5 Bolts 3/4x25" ----	} 50/10/5%	\$ 1.54	
5 Bolts 3/4x37" ----		2.14	
6 Bolts 3/4x35" ----		2.44	
2 Bolts 3/4x47" ----		1.05	
15 Bolts 1/2x19" ----		1.91	
13 Bolts 1/2x20 1/2" ----		1.79	
		<hr/>	
		\$10.87	4.65
4 Bolts 5/8x13" ----	} 50/10/5%	\$0.56	
8 Bolts 1/2x 5 1/2" ----		.48	
4 Bolts 5/8x21" ----		.80	
3 Bolts 5/8x25" ----		.69	
3 Bolts 5/8x23 1/3" ----		.67	
4 Bolts 5/8x18" ----		.71	
8 Bolts 3/4x31" ----		2.94	
16 Bolts 5/8x17" ----		2.72	
16 Bolts 1/2x 8" ----		1.12	
4 Bolts 1/2x 5" ----		.22	
4 Bolts 1/2x 7" ----		.26	
4 Bolts 1/2x10" ----	.32		
		<hr/>	
		\$11.49	4.91
			<hr/>
			\$295.97





## EXHIBIT 2b.

Labor and Material furnished on account of the Machinery Contract of the McDonough Manufacturing Company

*Invoices of the Holley-Mason Hardware Company.*

1911

Frt

May 3, 3 sheets 16x30x96 Blk. steel-----	158 lbs.	3.95	6.24
4 sheets 16x36x120 Blk. steel-----	300 lbs.	3.95	11.85
3 sheets 16x48x120 -----	300 lbs.	3.95	11.85
			<u>29.94</u>

46

May 13, 12 ft. 2 1/4" Rd Mild Steel-----	165 lbs.	2.85	4.70
1040 ft. 1/4x1 1/4 P & C Track Iron-----	1098 lbs.	3.80	41.72
9 sheets 16x30x96 Blk. Iron-----	432 lbs.		
2 sheets 16x48x120 Blk Iron-----	202 lbs.		

---

 634 lbs.

25.04

8 pcs No. 16 24"x120" Blk Iron-----			
4 pcs 16 24"x48" -----			
1 pc 16 48"x48" -----	829 lbs.	3.95	32.75
1 pc 16 30"x48" -----			
18 pcs 16 20"x48" -----			

Cutting -----			3.50
---------------	--	--	------

20 lbs. 1/2"x2 1/2" Track Nails-----	.06		1.20
			<u>108.91</u>

6.60

May 20, 134 ft. 8" of 6" Blk pipe-----	69.40		93.46
1 6" foot valve-----			4.65
1 6" Flg. union-----	1.50	55%	.68

98.79

May 27, 150 ft. 1" Black pipe-----	157-2	5.75	9.04
70 1 1/2" -----	73-4	9.40	6.89
250 2" -----	248-10	12.05	29.98
2 2x1 Mal Reducers Blk-----	90	1.80	
1 2x3/4 -----	90	.90	

.54

6 1" Mal Ells-----	30	2.70	80%	.54
6 1" Tees -----	35	2.10		
4 1 1/2" Mal Ells Bd-----	60	2.40		
4 1-1-2 Tees -----	80	3.20		
8 2" Bd Ells-----	1.00	8.00		
5 2" Tees -----	1.35	6.75		
6 2" Mal Crosses-----	2.00	12.00		

---

 36.25 80%

7.25

3 1" Mal Crosses Unions-----	33	.99	
6 2" -----	75	4.50	

---

 5.49 60%

2.20

3 1" Std Globe Valves-----	1.80	5.40	
2 1 1/2" -----	3.50	7.00	

---

 12.40 60%

4.96

4 4" C I Flange Unions-----	2.10	8.40	
1 5" -----	3.15	3.15	

---

 11.55 55%

5.20

1 5"x6" Black Nipple-----		2.45	70%	.74
1 5" C I Cross-----		5.50		
2 4" -----		6.30		
2 4x4x2 C I Red Tees-----	3.15	4.00		

---

 15.80 50%

7.90

---

 Forward -----

74.69

12.30

---

 237.64

1911

Frts.

74.69 237.64 12.30

Forward -----  
 May 27, 2" C I Plugs----- .10

1 1 1/2" ----- .07  
 1 5" ----- .88

---

 2.15 60% .86

1 5" C I Tee serd-----  
 1 5" Ell ----- 2.00  
 1 5" 45 Ell----- 2.50

---

 7.50 50% 3.75

6 2" Fig 779 Hose Valves----- }  
 4 2" Scott Gate Valves----- } 27.00  
 2 4" L B Globe Valves Fed----- 7.50  
 3 5x4 Cast Iron Bushing----- .93  
 4 4x2 ----- .50

---

 42.00 60% 16.80  
 30.00 60% 12.00  
 38.00 60% 15.20  
 2.79  
 2.00

---

 4.79 60% 1.92 125.23

May 31, 1 6 Close nipples-----  
 1 6 Tee ----- .56  
 1 6 Cap ----- 2.00  
 1 pc 6"-6' Pipe Thread----- .78  
 1 5 Tee ----- 76.34  
 1 pc 5"-2 1/2 Ft do----- 4.58  
 1 5 Cap ----- 1.50  
 1 5 Gate Valve----- 1.47  
 Cutting pipe ----- .60  
 ----- 25.00 60% 10.00  
 ----- 3.12 10% 2.81 24.30

May 31, 1 pc 6" pipe 3 1/2 ft long-----  
 2 6" Couplings----- 76.34  
 1 6" Flange Union----- 4.80 60% 1.92  
 Cutting Pipe ----- 3.95 55% 1.78  
 ----- 1.75 10% 1.58 7.95 12.65

---

 May 29, 1 No. 204 Upper Sight Feed Arm----- .75 10% .68

---

 Total ----- \$395.80 24.95  
 Less 2% ----- 7.92

---

 Freight ----- 387.88  
 ----- 24.95

---

 \$412.83

June 1, 5" Blk pipe 9 ft TBE-OA, 1 pc-----	58.85	5.30
1 Run 5" Blk Pipe 42 ft TBE-OA-----	58.85	24.72
1 Run 5" Blk Pipe 40 ft TBE-OA-----	58.85	23.54
1 pc 5" Blk Pipe 4' 6" TBE-OA-----	58.85	2.65
1 pc 4" Blk Pipe 9' TBE-OA-----	42.40	3.82
(Including Gate Valve in Center.)		
1 Run 4" Blk Pipe 28 ft TBE, includ- ing Flange Union-----	42.40	11.87
1 pc 4" Blk Pipe 7' 6" TBE, includ- ing Flange Union-----	42.40	3.18
1 Run 4" Blk Pipe 37' TBE, includ- ing Flange Union-----	42.40	15.69
1 Run 4" Blk Pipe 100 ft TBE, in- cluding Flange Union-----	42.40	42.40
Cutting 4 pcs 5" pipe-----	5.48	
Cutting 10 pcs 4" pipe-----	8.75	
	14.23	10 %
	20.00	60%
	8.40	55%
	3.78	157.76

June 1, 6-2 to 1 Blk Reducers----- .90  
6-2 to 1 1/2 ----- .90

6 2x3 Short Nipples----- .27  
6 2 to 1 Bushings----- .14  
6 1 1/2 to 1 1/4 ----- .09  
6 2 to 1 1/2 ----- .14  
6 1 1/4 to 1 ----- .07  
6 1 to 3/4 ----- .06

10.80 80% 2.16  
1.62 70% .49

.84  
.54  
.84  
.42  
.36

3.00 55% 1.35

.48  
.78

1.26 70% .38 4.38

June 5, 1 box No. 166-7/2" Kearsarge Spiral

Pkg ----- 2-10/16 lbs.

1 box No. 166 1" Kearsarge Spiral

Pkg ----- 9-10/16 lbs

1 box No. 181 1/2" Hydro Spiral Pkg-10-3/16

2 lbs. No. 222 1/4 Mogul do-----

1 lb. No. 222 3/16 do-----

1 lb. No. 222 1/8 do-----

1 box 166-7/16 Kearsarge Spiral

Pkg ----- 1-17/16 lbs.

1.35

2.36

33.08

.30

June 6, 2 yds 1/32 Wire Inserted Mobline

Packing ----- 8 1/2 lbs.

2 yds 1/16-Com C I Packing

(Bought) ----- 13 1/2 lbs.

90 per lb. 7.65

19

2.57

10.22

June 8, 3 lgrhs 3/8" Blk pipe short length----- 48-2

2 lgrhs 1/2" pipe short lgrh----- 36-3

12 1/2" Blk. Mal. Ells----- 19

8 3/8" do ----- 16

2.35

3.35

2.28

1.28

3.56

80%

.71

.24

.20

.44

70%

.13

5.00

50%

2.50

1.20

60%

.48

.48

60%

.19

Forward -----

6.37

205.44

.30

		Frt
June 8,	Forward -----	.30
June 8,	2 2" 45 deg. C I Ells.-----	.68
June 8,	1 6" I B Swing Check Valve ser'd.-----	.34
		48.00
		63%
June 8,	2 ¼ pint Zero S F D C Lubricators	6.00
	3 ½ do -----	10.50
		.25
	1 ¼" Syphon for steam gauge-----	
	1 6" I B Swing check, valve ser'd.-----	17.76
	6 1.2 Blk Couplings-----	.17
		34.68
June 8,	4 ¼" Crosby angle valves.-----	28.00
	1 1 ½" do -----	9.50
		37.50
		65%
	117' 2" 1¼" Blk pipe-----	13.13
		7.85
		9.19
	2 1¼" Scott Gate Valves-----	3.50
	3 1½" do -----	5.00
	2 2" do -----	7.50
		37.00
		60%
	6 1¼" Blk Mal Bd Ells-----	2.88
	6 1½" do -----	3.60
		6.48
		80%
	3 1½" Blk C I Bd Tees-----	.87
		.50%
	6 1¼" Mal Unions-----	2.76
	6 1½" " -----	3.48
		6.24
		60%
	6 1½x1¼ Mal Bushing-----	.54
		.55%
	1 2½x1½x2½ C I Red Tee-----	.83
		50%
	2 4" C I Ells-----	1.20
	1 3x2x2½ C I Red Tee-----	1.25
		4.48
		50%
	1 4x2 C I Bushing-----	.50
		60%
	1 2x1½ " -----	.14
		55%
	1 3" C I Flange Union-----	1.50
		55%
	1 2½" Scott-Jenk Globe Valve-----	11.00
	1 2" I P FF Pemberthy Injector-----	.68
		4.40
		27.00
		70%
June 9,	1 coil 7/8" Diagonal Spiral packing--8 lbs. 10 oz. .90	7.26
	1 box 7/8 No. 166 Kearsarge spiral packing -----8 lbs. 8 oz. 1.35	11.47
		18.73
		.60
" 12,	1 run 3" Blk pipe 310 ft T.B.E.-----	8.63
	1 run 4" Blk pipe 28 do do -----	11.87
	1 pc. 4" Blk pipe 80 ft T.B.E.-----	3.39
	1 pc. 4" do 14 ft do -----	.57
	1 pc. 6" Blk pipe 2 6" ft do -----	76.34
	1 pc 2½" Blk pipe 2' 9" ft T.B.E.	21.17
	1 box paint from W B L & Co.-----	xx
	Charge cuts & Thrds on above pipe-----	5.24
		10%
		4.72
		31.67
		1.60
" 12,	3 4x2½" C I Ells-----	4.20
	2 2½" C I Ells-----	1.00
	1 2½" C I Cross-----	1.30
		6.50
		50%
	3 2½" I B Gate valves Std.-----	36.00
		60%
		14.40
		17.65
" 12,	3 pcs 4" Blk pipe 8 ft TBE-----	42.40
	3 " 2½" " 6"-3" TBE-----	21.17
	Cutting and threading-----	3.97
		3.76
		10%
		3.38
		17.53
		1.55
	Forward -----	426.34
		6.20

June 12, 1 box Besti Monia 172x $\frac{1}{2}$ "-----	2 lbs. 9 oz.	1.15	2.95
1 coil Aqua Hyd 182x $\frac{1}{4}$ "-----	9 oz.	.95	.53
1 do do 5/16"-----	1 sq		.95
1 do do 3/8"-----	1 lb 9 oz.	.95	1.48
1 do do 1/2"-----	1 lb. 13 oz.	.95	1.72
2 $\frac{1}{2}$ lbs. Mogul No. 222 $\frac{1}{2}$ "-----	2 $\frac{1}{2}$ lbs.	1.00	2.50
1 box Duro spiral 171x $\frac{3}{8}$ "-----	1-3 oz.	1.15	1.37
1 do do 1"-----	8 lbs. 12 oz.	1.15	10.06
1 do High press diag 183 7/16"-----	8 lbs. 12 oz.	1.15	8.06
6 Kearsarge Standard gaskets No. 116		1.25	6.87
size 12x10x1 $\frac{1}{4}$ x $\frac{1}{2}$ -----	5 $\frac{1}{2}$	1.35	19.24
1 sheet 1/16 Penanite No. 60-----	1 $\frac{1}{4}$		55.73
" 23, 1 4x2 $\frac{1}{2}$ Ell-----		1.40	50%
3 1 $\frac{1}{4}$ Gate valves, Scott-----	3.50	10.50	.70
3 1 $\frac{1}{4}$ do-----	5.00	15.00	
25.50 60%		25.50	60%
1.74		1.74	
6 1 $\frac{1}{2}$ " Tees Cast-----	29	1.20	10.20
6 1 1/2" Ells cast-----	20		
2.94 50%		2.94	50%
1.47		1.47	
6 1 $\frac{1}{2}$ -1 $\frac{1}{4}$ Bushing Mal-----	09	.54	55%
6 1 $\frac{1}{4}$ Tees Blk Mal Bd 9 lbs-----	12	1.08	35%
6 1 $\frac{1}{4}$ Ells do 73-----	12	.84	
1.92 35%		1.92	35%
1.25		1.25	
6 1 $\frac{1}{4}$ x1 Bushing Mal-----	07	.42	55%
3 1 Globe Valve Jenkins-----	2.80	8.40	50%
6 1 Tees Blk Mal 5 lbs-----	12	.60	4.20
6 1 Ells " 5 lbs-----	12	.60	
1.20 35%		1.20	35%
.78		.78	
6 1 3/4 Bushings-----	06	.36	.16
3 3/4 Globe Valves Jenkins-----	2.20	6.60	50%
6 3/4 Tees Blk Mal 3 $\frac{1}{2}$ lbs-----	12	.42	35%
6 3/4 Ells " 2 $\frac{1}{2}$ lbs-----	12	.30	
.72 35%		.72	35%
.47		.47	
6 3/4" short nipples 2-----	06	.36	
6 1 " " 2-----	08	.48	
6 1 $\frac{1}{4}$ " " 2 $\frac{1}{2}$ -----	11	.66	
6 1 $\frac{1}{2}$ " " 2 $\frac{1}{2}$ -----	13	.78	
2.28 70%		2.28	70%
.68		.68	
23.64		23.64	
.35		.35	
June 14, 2 1 pt Zero D S Lubricators-----		5.50	11.00
" 14, 3 3" C I Flange Union 150 lbs-----		4.50	55%
2 3" J D- I B Globe Valve-----	16.75	33.50	50-5%
1 3" J D- I B "-----	16.00	16.00	60%
1 3" C I Tee-----		1.10	
2 3x3x1 $\frac{1}{4}$ " C U Tees-----	1.25	2.50	
3.60 50%		3.60	50%
1.80		1.80	
2 3x3 Black Nipples-----	48	96	70%
1 3x5 "-----		.72	
1 3x6 "-----		.85	
2.53 70%		2.53	70%
.76		.76	
1 C I Cross-----	12.25	12.25	50%
1 7x6 Bushing-----		1.87	
1 7x5 "-----		1.87	
1 7x3 "-----		1.87	
5.61 60%		5.61	60%
2.24		2.24	
35.26		35.26	
.70		.70	
Forward-----		551.97	7.25

## Forward -----

June 15, 2 pcs 3" Blk Pipe 8 ft 6" T.B.E. 17 ft.  
(including 3" flange union)  
1 pc 3" Blk pipe 14 ft 6" T.B.E.-----

27.83

4.73

27.83

4.04

1.50 10%

10.12

" 15, 2 pcs 5" pipe with check in cent  
22" pipe -----

58.85

2.94

38.00 63%

14.06

1.38 10%

1.24

18.24

46e

1 5" Vertical Check valve.-----  
Cutting and threading -----

9.40

7.80

" 17, 2 7" C I Ells -----4.70  
1 7x3 C I Tees -----7.80

17.20 50%

8.60

1.87

45.00

1 7x5 C I Bushing -----  
1 7" I B Gate Valve.-----

46.87 60%

18.75

25.30

10.33

40 ft 10" 3" Blk Pipe -----  
33 ft 5" 2 1/2" do -----

19.25

6.43

3.20 70%

45.07

1 7" sht Blk Nipples -----

" 19, 204' 0" of 1 1/2 Black pipe.-----

9.40

19.18

159 7" of 2" do -----

12.05

19.23

52' 2"-16" Black pipe T.B.E.-----

76.34

39.83

1 6" I B Expansion joint.-----

45.00 60%

18.00

1 6" Gate Valve.-----

30.00 60%

12.00

1 pc 6" T.B.E. Blk pipe 14'-7" long

76.34

11.14

1 pc 7" do 2' "

112.75

2.25

1 do 7" do 3' "

112.75

3.38

1 do 7" do 12" long.---

112.75

1.13

Charge cuts and threads.-----9.88.

9.88 10%

8.89

8 1 1/2" cast iron ells.-----20

1.60

2.32

8 1 1/2" do tees.-----29

3.92 50%

1.96

1.04 70%

.31

8 1 1/2 Blk short nipples -----13

16.50 50%

8.25

3 1 1/2" Jenkins Disc globe valves.5.50

.11

.82

4 1 1/2" Cast iron plugs.-----07

1.64 50%

.82

4 2" do tees.-----41

.20 60%

.08

2 2" do plugs.-----10

.81 70%

.24

3 2x3 Blk nipples -----27

.75 60%

.30

1 2" Mal Union -----

2.75

1 6" cast iron ell -----

9.40

4.70

2 7" do -----4.70

12.15 50%

6.08

3.20 70%

.96

1 7" short blk nipples -----

2.50 50%

1.25

155.39

1 7" Cast iron cap.-----

112.75

3.95

" 19, 1 pc 7" Blk pipe 3' 6" TBE.-----

112.75

6.76

1 7" 6' 0" -----

112.75

18.60

1 7" 16' 6" -----

6.15 10%

5.54

34.85

Charge for cutting and threading

" 19, 2 3/8" Jenkins Angle Valves.-----1.25

2.50

2 1/2" -----1.60

3.20

12 2" C I Ells -----28

5.70 50%

2.85

12 1 1/2" -----20

3.36

2.40

12 1 1/2" tees -----29

3.48

4.92

12 2" -----41

14.16 50%

7.08

9.93

10.15

## Forward -----

825.57

18.15

Forward -----	
June 20, 12 1 1/4" C I Ells-----	1.92
12 1 1/4 do Tees-----	2.76
2 3 do -----	2.20
2 3" do Ells-----	1.50
1 3x1 1/2 x 3 C I Tees-----	1.25
1 4" C I Ells-----	1.20

10.83 50% 5.42  
.96  
.85

2 3" Close Black Nipples-----	48
1 4" Close Black Nipples-----	85
3 1 1/4" Mal Unions-----	46
7 1 1/4" Jenkins angle valves-----	4.00
1 7x4 C I Bushing-----	

1.81 70% .54  
1.38 60% .55  
28.00 50% 14.00  
1.87 60% .75 21.26

June 26, 1 7" Close Black Nipples-----	
1 7" C. I. Flange Unions-----	
1 pc 7" Blk pipe 1 ft O" TBE-----	
1 pc 7" Blk pipe 6 ft O" TBE-----	
1 run 7" Blk pipe 31 ft O" E to E TBE	
Cutting and threading-----	

3.20 70% .96  
3.95 55% 1.78  
112.75 1.13  
112.75 6.76  
112.75 34.95  
6.38 10% 5.74 51.32

June 27, 2 7" C I Ells-----	4.70
-----------------------------	------

9.40 50% 4.70 4.70 1.00

June 27, 50 ft 1/4" Black Pipe-----	48-0
60 1/2" -----	59-10
60 3/8" -----	61-2
3 1/4" Jenkins Globe Valves-----	1.10
6 1/4" Angle -----	1.10

2.35 1.13  
3.35 2.01  
2.35 1.44  
3.30  
6.60

9 1/4" Blk Mal Ells-----	11
9 1/4" Tees-----	14

9.90 50% 4.95  
.99  
1.25

3 1/2x1/4" Blk Bushing-----	04
4 1/2" Jenkins Angle Valves-----	1.60
4 3/8" -----	1.25
3 1/2" Globe -----	1.60
3 3/8" -----	1.25

2.25 80% .45  
.12-55-10% .05  
6.40  
5.00  
4.80  
3.75

6 3/8" Sht Black Nipples-----	04
6 3/8 Close -----	04

19.95 50% 9.98  
.24  
.24

6 1/2" Sht Blk Nipples-----	05
6 1/2" Close -----	05

.48 70% .14  
.30  
.30

6 3/8" Blk Mal Ells-----	16
3 3/8" Tees-----	22

.60 70% .18  
.96  
.66

6 1/4" Mal Unions-----	18
------------------------	----

1.62 80% .32  
1.08 60% .43 21.08 2.50

June 27, 1 2 1/2" Whistle Valve-----	
--------------------------------------	--

8.50 8.50

June 29, 1 7" Short Black Nipples-----	
1 7" C I Flange Union-----	
1/2 doz. 1" 4-ply Hose Clamps-----	

3.20 70% .96  
5.50 55% 2.48  
.85 (doz.) .42 3.86

Forward -----

936.29 22.00

June 28, 98' 0" 3 1/4" Blk Pipe-----	400 ft	3.92
108' 10" 1" Blk Pipe-----	5.75	6.25
3 pc 4" Blk Pipe 2'-0" TBE-----	42.40	2.54
Cutting and threading-----	2.64 10%	2.38
1 2" C I 45d Ells-----	.34	
2 1 1/2" do -----	.48	
1 2 1.2" do -----	.60	
2 3" do -----	1.80	
-----		
25 ft 1" 4-ply water hose, Bay State-----	3.22 50%	1.61
1 7x7x6 C I Tees-----	24 1/2	6.12
6 7x5 C I Bashing-----	7.80 50%	3.90
3 3" C I Ells-----	11.22 60%	4.49
3 3x2 C I Tees-----	2.25	
3 3" C I Tees-----	3.75	
-----	3.30	
-----		
3 1 1/2 x 1 1/4 Mal Bushings-----	9.30 50%	4.65
6 1 1/4" Mal Unions-----	27 55%	.12
6 1 1/2" do -----	2.76	
6 2" do -----	3.48	
6 2 1/2" do -----	4.50	
6 3 1/4" C I Plugs-----	.18	
6 1" C I Plugs-----	.24	
2 1 1/4" do -----	.10	
-----		
6 1 1/4" Blk Mal Bd Ells-----	11.26 60%	4.50
6 1 1/4" " " " Tees-----	2.88	
6 1" " " " "-----	3.60	
6 1" " " " "-----	2.10	
6 1" " " " Ells-----	1.80	
6 3/4" " " " "-----	1.08	
-----		
3 3/4" Jenkins Globe Valves-----	11.46 80%	2.29
3 1" do -----	6.60	
3 1 1/4" do -----	8.40	
-----	12.00	
-----		
6 3/4" Short Blk Nipples-----	27.00 50%	13.50
6 1" do -----	.36	
6 1 1/4" do -----	.48	
-----	.66	
-----		
6 3/4" Blk Mal Tees-----	1.50 70%	.45
3 1x3/4" Mal Bushings-----	1.38 80%	.28
3 1 1/4 x 1 do -----	.18	
-----	.21	
-----		
6 3/4" Mal Unions-----	.39 55%	.18
6 1" do -----	1.62	
-----	1.98	
-----		
4 2 1/2" C I Flange Unions-----	3.60 60%	1.44
6 2x1 1/2" Blk Bushings-----	5.00 55%	2.25
3 2 1/2 x 2 C I "-----	.84 55%	.38
2 3x2 " "-----	.63	
3 4x3 " "-----	.60	
3 3x2 1/2 " "-----	1.50	
-----	.90	
-----		
6 1 1/2" Short Blk Nipples-----	3.63 60%	1.45
6 1 1/2" Close Blk Nipples-----	.78	
6 1 1/2 x 4 1/2 do -----	.78	
3 2 1/2" Short do -----	1.20	
-----	1.17	
-----		
3 2 1/2" Close Blk Nipples-----	3.93 70%	1.18
2 4" Close " "-----	1.17	
2 4x4 1/2 " "-----	1.70	
-----	2.40	
-----		
12 1 1/2" C I Ells-----	5.27 70%	1.58
12 1 1/2" C I Tees-----	2.40	
3 1 1/2" C I 45d Ells-----	3.48	
-----	.72	
-----		



Frht.

22.00

65.46

6.60

Forward -----  
 6 2" C I Ells ----- 34  
 6 2" C I Tees ----- 41  
 2 2 1/2" C I Ells ----- 50  
 2 2 1/2" C I Tees ----- 73

13.56 50% 6.78

2 2 1/2" C I Plugs ----- 07  
 2 2" do ----- 10

.34 60% .14

6 1 1/2" Scott Gate Valves ----- 5.00  
 2 2" do ----- 7.50

45.00 60% 18.00

6 1/4" Fig. 744 Air Cock ----- 45  
 1 6x5 C I Bushing -----  
 1 7x8 do -----

3.12 60%

1.25

92.44

2.30

1028.73 24.30

20.57

Less 2% -----

1008.16

24.30

Freight -----

\$1032.46

July 6,

6 3/4 Blk Ells ----- 18

1.08

6 3/4 Blk Tees ----- 23

1.38

4 3/4 " Unions ----- 27

2.46 80% .29

3 3/4 " Plugs ----- 03

1.08

.09

4 3/4 Globe Valves (Jenkins) ----- 2.20

1.17 60% .47

4 1 Blk Mal Bd Ells ----- 30

8.80 50% 4.40

4 1 " " Tees ----- 35

1.20

1.40

4 1 " " Unions ----- 33

2.60 80% .52

4 C I Plugs ----- 04

1.32 60%

.16 "

4 1 Jenkins Globe Valves ----- 2.80

1.48 60% .59

1 4 Gate Pot -----

11.20 50%

.35 12.42 .30

Less 2% -----

12.42

.25

Freight -----

12.17

.30

\$12.47



EXHIBIT 2c.

Labor and Material Furnished on Account of Machinery  
Contract of the McDonough Manufacturing  
Company.

*Invoice of Washington Machinery and Supply Company.*

May 2, 1911.	6 ft 2 3/16" T. & G.		
	shaft -----	\$ 3.85	
	2 2 3/16" flat boxes---	3.90	
	2 2 3/16" saftey set col-		
	lars -----	1.20	
	2 20x6x2 3/16" steel		
	split pulleys -----	10.80	
	8 ft. 2 15/16" T. & G.		
	shaft -----	8.90	
	2 2 15/16" solid boxes--	5.00	
	2 2 15/16" safety set col-		
	lars -----	2.00	\$35.65
			<hr/>
May 3, 1911.	Freight on shipment of		
	May 1, 1911.		
	Prepaid to Cusick, Wash--	\$ 1.00	\$ 1.00
	2 Steel pulleys -----		
	1 Sk. Castings -----		
	2 Pcs. Shaft -----		
May 16, 1911.	3 7/8" Safety collars---	\$ 5.28	
	7' 2 3/16" Shaft K. S--	6.23	
	1 Steel split pulley 16x8		
	x2 15/16" -----	4.95	\$16.46
			<hr/>
May 17,	Freight on shipment of		
	5/16/11.		

	Prepaid to Cusick, Wash.		
	1 Pulley -----		
	1 Set fittings, 100 lbs---	\$ .30	\$ .30
	1 Pc. Shafting -----		
July 8,	1 Casting as per sample---	\$3.77	
	Freight -----	.75	4.52
			<hr/>
			\$57.93

## EXHIBIT 2d.

Labor and Material furnished on account of the Machinery Contract of the McDonough Manufacturing Company.

*Invoices of Newport Iron Works.*

1911.

May 12.	Keyseating shaft ----	\$ 1.50		
	Freight and drayage_	1.20	2.70	\$2.70
			<hr/>	
June 15.	20½' of 5" pipe-----	\$ 5.35		
	Prepaid freight -----	.50	5.85	
			<hr/>	
June 17.	3 2½" close nipples--	\$ .75		
	3 1 ¼" Mal Beaded			
	tees -----	.75		
	9 1¼" Cast elbows--	1.15		
	Prepaid express ---	.35	3.00	
			<hr/>	
	1 Pc. 5" pipe 11' 8"			
	thd 2 ends-----			
	1 Pc. 5" pipe 9' 8"			
	thd 2 ends-----			

2 Pcs. 5" pipe 1' 10"		
thd 1 end-----		
	18.40	
4 5" cast elbows-----	5.20	
2 5" close nipples-----	1.00	24.60

---

June 27.	6 3/4" plugs -----	\$ .30	
	3 1x3/4 Bushings ---	.15	
	6 3/4" Unions -----	1.20	
	6 1" Unions -----	1.50	
	6 1" Nipples -----	.35	
	3 3/4" Globe Valves--	3.00	
	6 3/4" Nipples -----	.30	
	6 3/4" Elbows -----	.85	
	6 3/4" Tees -----	.90	
	6 1" Tees -----	1.20	
	6 1" Elbows -----	.90	
	6 1" Plugs -----	.30	
	3 1¼x1" Bush -----	.15	
	Prepaid freight and		
	express -----	12.30	12.30

---

June 29.	1 4x2½ Bushing ---	\$ .35	
	1 5" Globe Valve-----	6.00	
	2 Pcs. 5" pipe fitted to		
	valve -----	2.40	
	1 4x1½x5 Tee -----	1.50	
	4 3" Nipples -----	1.20	
	2 3" Elbows -----	1.80	
	6 1" Couplings -----	.60	
	3 1½" Couplings ---	.35	

*M. A. Phelps Lumber Company v.*

3 1" Globe Valves---	3.75	
1 3x2 Bushing -----	.25	
2 3" Flange Unions--	2.00	
2 3" Nipples -----	.60	
3 3x3x1½ Tees -----	3.00	
91' 1¼" pipe-----	8.20	
1 3" Valve -----	4.90	
1 3" Nipple -----	.30	
14" 3" pipe thd 2 ends	.75	
Prepaid freight ---	.40	38.35

---

\$84.10

*Invoices of Newport Iron Works—Continued.*

July 3.	5 3" Nipples -----	\$ 1.50
	1 3" Gate Valve-----	7.80
	1 3" Elbow -----	.90
	1 3" Flange Union (second hand) ----	.85
	12 2" Nipples, 12 1½ and 12 1¼ Nipples-	3.10
	6 1½" Unions -----	1.75
	6 1¼" Unions -----	1.50
	6 1/4 Elbows -----	1.15
	6 11/4 Tees -----	1.80
	3 1¼ plugs drilled and tapped for ¼" pipe -----	.35
	3 3/4" Unions -----	.45
	2 2" Globe Valves (Jenkins) -----	10.00
	62' of 1¼ Blk pipe---	5.60

	Prepaid freight and express -----	.75	\$37.50
<hr/>			
July 7,	4 4" Nipples -----	\$ 1.60	
	3 1½x1¼ Bushing --	.30	
	Prepaid express ---	.30	
	Work on 6" pipe---	2.25	
	Paid freight-dray- age on pipe-----	1.20	\$ 5.65
<hr/>			
July 8.	6 ¼" assorted Nip- ples -----	\$ .20	
	6 ½" Elbows -----	.25	
	6 1/4" Tees -----	.30	
	3 ¼" Unions -----	.40	
	3 1/4" Couplings ---	.25	
	3 1/4" Globe Valves--	1.50	
	Prepaid express ---	.25	
	3 3x3x1½" Tees ---	3.00	
	1 4x5 Cast Ell in place of bent one-----	No charge.	
	2 4" Cast Ells-----	2.00	\$ 8.15
<hr/>			
July 10.	Prepaid express on pipe fittings from Spokane -----	\$ 1.25	\$ 1.25
<hr/>			
July 24.	1 6" Cap -----	\$ 1.00	
	1 4" Plug -----	.35	
	1 3" Plug -----	.25	
	6 2" Nipples -----	.90	

Prepaid express --- .35 \$ 2.85

---

July 10. 6 ½" Couplings ----\$ .50  
 6 ½" Unions ----- 1.00  
 6 ½" Elbows ----- .60  
 6 ½" Tees ----- .70  
 4 ½" Plugs ----- .25  
 3 ½x¾" Bushings -- .15  
 1 Signal Whistle ---- 1.00  
 4 ½" Standard Valves 3.40  
 2 ½" Jenkins Valves\_ 2.50  
 Prepaid express --- .30 \$10.40

---

July 12. 46' of 1½" black pipe\_ \$ 5.30  
 8 3/8 to 1/4 Bushings .40  
 6 1/4" Nipples, close\_ .30  
 6 3/8" close nipples\_ .35  
 Prepaid express --- .25 \$ 6.60

---

\$72.40

EXHIBIT 2e.

Labor and Material Furnished on Account of Machinery  
 Contract of the McDonough Manufacturing  
 Company.

*Invoice of Crane Company.*

July 10, 1911	Price	Gross	Net
5 6" Std C I Ells Scd_50%	2.75	13.75	6.87
4 6" Sht Blk Nipples_70%	1.85	7.40	2.22
2 6 Flange Unions_50%	3.95	7.90	3.95
2 6 Blk W I Couplings_55%	2.40	4.80	2.16
2 ¼ No. 700 Pet cox_70%	.45	.90	.27



1 pc 6" Blk pipe 4' 0" TBE. )			
1 " 6"                    0' 14" " - )	76.34		3.94
5' 2" - )			
2    6 Cuts -----	.35	.70	
4    6 Threads -----	.70	2.80	
		<hr/>	
	10%	3.50	3.15
			<hr/>
			22.56
Freight -----			1.05
			<hr/>
			\$23.61



EXHIBIT 2B

Labor and Material Furnished on Account of the Machinery Contract of the McDonough Manufacturing Company.

*Invoices of Marshall-Wells Hardware Company*

1911

Apr 14, 560 ft 3/4x3 Mild Steel -----	4421	2-85/100	126.00
130 5/8x6 S. T. Sleigh shoe bolts	130	7-58/100	9.85
100 5/8x7 " " " "	1	8,26	8.26

45%	18.11	9.96
14 60		8.40
14 hrs time for drilling mild steel		144.36

144.36  
2.88

\$141.48  
11.05

Apr 27, 1 Box Iron bolts, 36 bars iron-----		7.50
May 2, 200 ft 1/4x1 1/2 Mild Steel -----	246	14.87
330 ft 1/4x2 " " -----	553	



## EXHIBIT D 4.

Labor and Material Furnished on Account of the Machinery Contract of the McDonough Manufacturing Company

-----  
*Invoice of Union Iron Works*

1911

June 22, 2 Pulleys 30x10 S. F., bore 2 15, K.S.-----	16.20
July 29, Sirtm. up bent spokes in 8" top wheel for sand mill -----	5.75
1 Saw wheel turning device-----	xx
Charge two ways -----	3.00
	8.75

Aug. 3, July 31, 10½ hours	}	Turning band wheel at Cusick
Aug. 1, 30 hours		
2 13½		

54 hours—6 days @ 6.00-----	36.00
Cash expenses -----	5.90
	41.90
Freight 8/3 -----	46.00
	\$87.90

Aug. 14, 1 Centre for Circle saws	}	
1 Flange		
1 Steel collar 5½ dia.		
3/16 thick, 1¼ hole		
Freight -----		.25

\$9.75



EXHIBIT 2h.

Labor and Material Furnished on Account of Machinery  
Contract of the McDonough Manufacturing Company

*Invoice of Dalkena Lumber Company*

April 30, 1911, Prepaid freight on foundation bolts \$1.50

EXHIBIT 2i

Labor and Material Furnished on Account of Machinery  
Contract of the McDonough Manufacturing Company

*Invoice of Spokane Saw Works*

1911

July 14, 1 only No. 1 Hanchett Circular

Saw Swage A -----	35.00	
10% -----	3.50	31.50
		<hr/>
Expressage -----		.60
		<hr/>
		\$32.10
		<hr/>

Endorsements: Received a copy of the within amended answer and cross-complaint at Spokane, Wash., this 23d day of February, 1912.

(Signed) McCARTHY & EDGE,  
*Attorneys for Plaintiff.*

Amended Answer and Cross-Complaint.  
Filed February 28th, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern  
District of Washington, Northern Division.*McDONOUGH MANUFACTURING COMPANY,  
a Corporation,*Complainant,**vs.*M. A. PHELPS LUMBER COMPANY, a Corpor-  
ation,*Defendant.*

## REPLICATION.

Comes now the McDonough Manufacturing Company, a corporation, complainant in the above entitled cause, and replying to the answer filed herein, says that saving and reserving all manner of exceptions to the insufficiency of the answer, for replication thereto doth say that its bill is true and sufficient as averred, and that it is ready to prove it, and that the answer of the defendant is untrue and insufficient.

WHEREFORE it prays relief as set forth in its original bill.

(Signed) McCARTHY &amp; EDGE,

*Solicitors for Complainant.*

STATE OF WASHINGTON,

County of Spokane—ss.

Personally appeared before me the undersigned, Joseph McCarthy, who being duly sworn on oath says that he is one of the solicitors for the above named complainant in the above entitled cause, and makes this verification for and on its behalf, and for the reason that



no officer or agent of complainant is within the State of Washington, but that such officers and agents are without the State of Washington, and that he is duly authorized to make said verification; that he has read the foregoing replication, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and that he believes the matters therein contained to be true.

(Signed) JOSEPH McCARTHY.

Subscribed and sworn to before me this 28th day of February, 1912.

HANCE H. CLELAND,  
*Notary Public for Washington, Residing at Spokane,  
Washington.*

Endorsements: Received copy of the within replication this 29th day of February, 1912.

DANSON, WILLIAMS & DANSON,  
*Attorneys for Defendant.*

Replication.

Filed February 29th, 1912.

WM. H. HARE, *Clerk*

By F. C. NASH, *Deputy.*

No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

This cause came on regularly for trial this----- day of April, 1912, before the Hon. Frank H. Rudkin, Judge Presiding. Complainant was represented by its attorneys, Messrs. McCarthy & Edge, and the defendant was represented by its attorneys, Messrs. Danson, Williams & Danson. Complainant and defendant in open court, by their respective attorneys, stipulated that the evidence should be taken in open court.

JAMES HUBBARD, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. State your name to the jury?

A. James Hubbard.

Q. What office do you hold with the McDonough Manufacturing Company?

A. President of the company.

Q. You held that office in 1910 and 1911?

A. Yes, since 1910.

(Testimony of James Hubbard.)

Q. Are you acquainted with any of the officers of the Muskegan Boiler Works?

A. I have met the president of the company.

Q. Who is that.

A. Stevens is his name.

Q. You have had frequent correspondence with that company?

A. Yes, we have had some correspondence.

Q. And you have seen that correspondence?

A. Most of it; I don't know as I carried on all the correspondence.

Q. Look at this letter I hand you and state if you recognize the signature there as being the signature of a responsible officer

A. I don't know anything about the signature I know the stationery; is all I know.

Q. You say you had no correspondence with Mr. Ashley of the Muskegan Boiler Works

A. No, we didnt' have any correspondence with him; we had correspondence with the Muskegan Boiler Works.

Q. Have you any of the letters received from them in court

A. I don't know whether I have any of them here or not.

Q. Did I understand you to say that you cannot identify any one of these signatures?

A. Not the signatures, no.

Q. Referring to defendant's exhibit 6, for identifica-

(Testimony of James Hubbard.)

tion, you say that you do not recognize any of the signatures?

A. I don't remember them.

Q. Look at these signatures that I hand you, these letters, and state whether the signatures that appear there where it is by yourself, is your signature and where it is by any one else, whether it is an officer of your company, and if it is a genuine signature?

A. That is not ours.

Q. You are referring now to something that is attached to a letter of yours of October 12th, 1910?

A. Never was attached when it left our office.

Q. Prior to the fall of 1910, had you any experience in the sawmill business?

A. Yes.

Q. The method of sawing lumber?

A. Well, generally, as much as a manufacturer should know about it, I guess.

Q. Did you know anything about the sawing season?

A. No.

Q. Did not know that there were sawing seasons?

A. No, I don't think I did. I knew sawmills run the year around.

Q. Did you have any knowledge about the depreciation that would occur in logs by being carried over?

A. No.

Q. Did you know there was such a thing as logs bluing?

A. No.

Q. Had no knowledge of anything of that sort?

A. No, sir. I did not.

(Testimony of James Hubbard.)

Q. Had you ever operated a saw mill?

A. No.

Q. Never had?

A. No.

Witness excused.

M. A. PHELPS, witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Your name is M. A. Phelps?

A. Yes, sir.

Q. What office do you hold in the M. A. Phelps Lumber Company?

A. The president.

Q. Were you president in the fall of 1910?

A. I was.

Q. When did you first meet, if at all, Mr. Hubbard, president of the McDonough Manufacturing Company?

A. I met him in Spokane early in September, 1910.

Q. When, with reference to about September 15th?

A. Well, it was about September 15th.

Q. Now, I call your attention to the document here under date of September 15th, 1910. Is that your signature under the name M. A. Phelps Lumber Company?

A. Yes.

Q. Do you know who signed that name J. A. Hubbard, "Accepted by J. A." or J. W., which is that?

A. J. W. Hubbard—that is, Mr. Hubbard here.

Q. The gentleman that was just on the stand?

A. Yes.

(Testimony of M. A. Phelps.)

Q. And when was it signed with reference to that date?

A. I think it was signed on that date.

Q. I call your attention to the language that appears here among the following words that are there specified, "No. 10,915 attached," was that written in about that time?

A. No, it was not.

Q. Do you know when that was inserted?

A. It was later; some time in the following month, I think. And this writing here also, I think.

Q. The words, "Cusick, Washington"?

A. Yes.

Q. Was filled in later?

A. I think so.

Mr. WILLIAMS: With the exception of the words which the witness has referred to, I offer in evidence this document which has just been identified.

The document admitted in evidence without objection and marked DEFENDANT'S EXHIBIT 7, and was read by Mr. Williams.

Q. What was said between Mr. Hubbard and yourself at the time this document was signed as to its purpose and as to its completeness?

A. Well, he said they was prepared to furnish machinery very promptly, a complete outfit.

Mr. WILLIAMS: Q. What, if anything, was said about drawing a further contract embodying your agreement, later?

(Testimony of M. A. Phelps.)

A. Well, this was drawn simply as a preliminary agreement.

Q. Well, what did he say about a future contract?

A. He said that they would have the plans drawn up, and specifications, and go into details, and that we would enter into a further contract.

Q. When did he make that statement to you?

A. Why, at the time we signed this preliminary agreement.

Q. What, if anything, did he say at the time with reference to the capacity of the McDonough Manufacturing Company to fill the order promptly?

A. He said that they was prepared to fill an order of that machinery in forty days.

Mr. McCARTHY: I object to that and ask that it be stricken out.

The COURT: I will sustain the objection to it.

Q. Mr. Phelps, when, if at all, did you go over the details of the machinery that was to be furnished with Mr. Hubbard?

A. We went over them to some extent at that time, but more fully a day or two later, at Cusick.

Q. That is the place your plant is located, is it?

A. Yes.

Q. And what, if anything, did you then agree upon as to the machinery that was to be supplied on this order?

A. Well, the agreement both there and at the other time, was that they should furnish all the machinery necessary to complete the bill of the pipe that we had talked of, including all pipe, valves and fittings of every kind,

(Testimony of M. A. Phelps.)

and everything in the shape of metal except nails and spikes. That is the language that was used at that time at Cusick. Mr. Hubbard raised the question of whether or not that would include drift bolts and truss rods.

Q. What was said about that?

A. Well, I considered that was a part of the frame of the mill and it would not include them.

Q. At the time that Mr. Hubbard was at Cusick or while he was at Spokane on that occasion were the specifications prepared?

A. No.

Q. How long did Mr. Hubbard remain here at that time?

A. Only a day or so after—I think the last I saw of him was when we was at Cusick.

Q. How long did he remain?

A. I should presume he was here altogether a week, possibly.

Q. When did you next see Mr. Hubbard after this time in September?

A. Well, it was the last of October.

Q. Now, to refresh your recollection, Mr. Phelps, directing your attention to a letter written by you, a letter of date November 4th—simply to refresh your recollection—state whether it was before or after that date?

A. It was after that date.

Q. After November 4th?

A. After November 4th.

Q. And where did you see him then?

A. He was here at Spokane.



(Testimony of M. A. Phelps.)

WHEREUPON letters under date of September 27th and September 30th, 1910, were admitted in evidence without objection and marked DEFENDANT'S EXHIBITS 8 and 9.

DEFENDANT'S EXHIBITS 11, 12, 13, 14, 15, 16, 17 and 18 were admitted without objection.

Mr. WILLIAMS: Q. Have you a letter of November 4th?

Mr. McCARTHY: We have no such letter.

Mr. WILLIAMS: Q. Mr. Phelps, I call your attention to a copy of letter purporting to be dated November 4th, from the Phelps Lumber Company to the McDonough Manufacturing Company. Look at that and state whether you know such a letter was written?

A. Yes, that was written.

Q. When, with reference to the date it bears?

A. Written that date.

Q. Mr. Phelps, directing your attention to this copy of letter, which I have already offered, of date of November 4th, did Mr. Hubbard come to Spokane again

A. I should say that he was here within a week.

Q. When he came to Spokane at that time did he say anything about this letter?

A. Well, we went over this whole matter at that time.

Q. Well, what, if anything, did he say about this letter of November 4th; did he say anything?

A. Well, he said that he wanted the matter fixed up satisfactorily and we supposed that it was at that time.

Q. Well, did he discuss this letter?

(Testimony of M. A. Phelps.)

A. I think he did.

Q. Did he say anything about its receipt?

A. I could not remember positively about that.

Q. Do you remember writing this letter?

A. Yes, sir.

Q. What, if anything, do you know about whether it was mailed?

A. I mailed that letter myself; I remember that.

Q. Addressed to the McDonough Manufacturing Company?

A. Yes,

DEFENDANT'S EXHIBIT 19 was hereupon admitted without objection and read into the record.

Q. Now, Mr. Phelps, did you ever get any answer to that letter? (Referring to letter written to the McDonough Manufacturing Company of date October 19th).

A. I don't remember it. I think Mr. Hubbard came out here at that time.

Q. He came personally?

A. Yes.

Q. And at that time did you take up these matters?

A. Yes.

Q. Did Mr. Hubbard at any time deny that the contract between you was as stated in this letter?

A. No.

Q. Mr. Phelps, look at this document that I hand you now, described as General Specifications No. 10,915, and to the last sheet of that. Who signed the name there, "McDonough Manufacturing Company, by J. W. Hubbard"?

(Testimony of M. A. Phelps.)

A. Mr. Hubbard.

DEFENDANT'S EXHIBIT 20 admitted in evidence without objection.

Q. Now, Mr. Phelps, at this time when Mr. Hubbard was there when these specifications were signed what, if anything, was done with reference to any additional boiler being furnished?

A. Well, we had a conversation with regard to an additional boiler.

Q. Did you have any agreement at that time as to how many additional ones you were to have furnished?

A. I don't think so; right at that time.

Q. I mean before he left?

A. I think he agreed on three.

The COURT: What was the date of this?

Mr. WILLIAMS: This document is not dated. Mr. McCarthy said this morning it was signed, he thought, on the 12th, and I stated in my statement to the jury it was somewhere between the 6th and 18th of November.

Mr. McCARTHY: We will identify it as having been signed November 12th, 1910.

Mr. WILLIAMS: Q. And what, if anything, was done at that same time with reference to the installation of the additional boiler?

A. Well, we had that up, too, and I—

Mr. WILLIAMS: Q. (Interrupting). Well, did you have any agreement with Mr. Hubbard at that time with reference to the McDonough Manufacturing Company installing a third boiler?

A. Yes, we did.

(Testimony of M. A. Phelps.)

Q. Now, what was said, if anything, to Mr. Hubbard with reference to their ability to furnish this extra boiler and this extra equipment?

Mr. McCARTHY: I object to the introduction of that as immaterial and irrelevant.

The COURT: Is there any claim for damage on the ground that the extra boiler was not furnished on time?

Mr. WILLIAMS: The claim for damage is the machinery was not furnished on time.

The COURT: You have asked him what the contract was as to this third boiler. There is no claim that is covered by the original contract, is there?

Mr. McCARTHY: No, there is not.

Mr. WILLIAMS: Q. What, if anything, was said between you at that time as to the time within which this extra boiler should be furnished?

A. It would not make any difference; it would be shipped with the rest, furnished with the rest.

Q. Did Mr. Hubbard say that?

A. Yes.

Q. Mr. Phelps, I call your attention to a letter here from the McDonough Manufacturing Company to M. A. Phelps Lumber Company, of date November 21, 1910, together with a copy of letter attached, two copies of letters attached, from the McDonough Manufacturing Company to the Muskegon Boiler Works, of the same date. Did you receive this letter of November 21st?

A. Yes.

Q. And was this copy of letter to the Muskegon Boiler Works enclosed with it?

(Testimony of M. A. Phelps.)

A. Yes.

DEFENDANT'S EXHIBIT 21 admitted without objection and read into the record, together with copies of letters attached thereto.

DEFENDANT'S EXHIBITS 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 were admitted in evidence without objection and read into the record.

Q. Mr. Phelps, what is the fact as to whether you were ready to receive this machinery during the months of January and February?

A. We were ready to receive it at any time those months.

Q. Now, Mr. Phelps, during these conversations that you had with Mr. Hubbard in September and also in November, what, if anything, did you tell him with reference to when you expected to start your mill?

A. Why, I told him that we wanted to start as early as we could in the spring, and if the machinery was there at the date fixed that we could start in April.

Q. What, if anything, did you tell him with reference to what you were going to do in getting out any logs; did you have any talk of that kind with him?

A. I think so; yes.

Q. State to the jury what you told him?

A. The last time he was here I told him that we was logging at that time for the next year's cut. He thoroughly understood that.

Q. Well, what, if anything, did you tell him about the extent to which you were getting out logs for the cut?

(Testimony of M. A. Phelps.)

A. I told him we would probably get out logs to the extent of six or seven million feet during the winter, to cut the next spring.

Q. Did you tell him anything about the sawing season in the State of Washington, the time that you could operate?

A. Well, that matter was talked about.

Q. When Mr. Hubbard was present?

A. Yes.

Q. Did you make the statement to anybody else? Who made the statement about the sawing season?

A. Well, I am positive I told him that the sawing season for lumber to be seasoned the same year would be up to the 15th of September; not later than that.

Q. When was that, the first or second time he was here?

A. I think it was the second time.

Q. Who was present at that time, if anyone at all, other than yourself and Mr. Hubbard?

A. I don't know anyone unless it be Mr. McIntyre, who might have been there.

Q. Who was this Mr. McIntyre that you are referring to?

A. He was their Western representative.

Q. Of the McDonough Manufacturing Company?

A. Yes, Western agent.

Q. Did you, after this, have any talk with Mr. McIntyre on the same subject?

A. Well, yes; no question about it but what we did.

(Testimony of M. A. Phelps.)

Q. Don't say, then, unless you remember. You don't remember anything?

A. I don't remember anything particular. I know we did a lot of talking to him.

Q. Now, of the machinery that was furnished to you by the McDonough Manufacturing Company, when was the last of it furnished?

A. In May.

Q. What time in May?

A. I think about the 20th.

Q. Now, was there any part of it that was not furnished at all?

A. Yes.

Q. What portion was not furnished, if any.

A. There was an idler for the refuse conveyor, and the sawdust—

Q. Mr. Phelps, how many logs did you get out for your cut in 1911?

A. Six million; about that.

Q. And where did you carry them in your mill?

A. There was some of them was banked right at the mill or east of the mill.

Q. Hauled or how?

A. Hauled, and others were run down the Kalispell River, and others run down the Pend d'Oreille River.

Q. And what time did you get those logs at or adjacent to the mill?

A. The logs that was hauled to the mill and directly there was hauled before February, on or about that time. The others was delivered in Kalispell Creek and run

(Testimony of M. A. Phelps.)

down that Creek in the spring at high water, across the lake and down the Kalispell River.

Q. Well, what time did they reach your mill or adjacent to your mill?

A. We ran them down there along in April and May, and some of them, I guess, in June. We had to stop at one time.

Q. In that stream, what is the situation with reference to the time that you must do your logging, if it is done?

A. Well, it has to be done there in the winter.

Q. I mean the running, I mean the driving of the logs?

A. Anywhere up to about the first of August.

Q. Up to the first of August?

A. Yes, about the first of August; possibly a little later than that.

Q. Can you drive up to that time?

A. Yes.

Q. In that year could you?

A. Yes.

Q. When were these logs cut?

A. Well, I guess they were cut from October until some time in December.

Q. Some time in December, 1910?

A. 1910.

Q. How many of these logs during the sawing season, if you were able to get the mill installed, were you able to cut or did you cut?

A. We cut a little over two million.



(Testimony of M. A. Phelps.)

Q. From the first of May, had the mill been in operation, would you have been able to cut the entire cut of six million during the sawing season?

A. Very nearly.

Q. Well, what difference would there be, if any?

A. There would be—yes, we could have cut them all.

Q. After this sawing season what happened to this remainder of about four millions of logs that you didn't cut?

A. There is a portion of them still banked at the mill, or just above it, part of them left in the Kalispell River, and a few of them up the Pend d'Oreille River.

Q. Were they cut during the year 1911?

A. I want to correct myself on one matter. There was a few of these logs that was cut early in the summer of 1910.

Q. Some of that six million?

A. Yes.

Q. How many were there that were cut, that you spoke of, that were cut before you entered into this contract with the McDonough Manufacturing Company?

A. In November?

Q. Yes, how many of this six million?

A. Well, I should judge that there would have been possibly four million of them cut.

Q. Four million cut before you entered into the contract with the McDonough Manufacturing Company?

A. Three and a half to four million.

Q. Cut before?

A. Yes; that is, the contract in November?

(Testimony of M. A. Phelps.)

Q. Before November?

A. November the 1st, not September.

Q. How many before the 1st, in September?

A. Not any.

Q. Now, Mr. Phelps, how much did you have invested in these logs that you had to carry over, as I understand you to say, you had to carry them over until this spring?

A. Yes.

Q. How much did you have invested in these?

A. I suppose twenty or twenty-five thousand dollars.

Q. When did you actually have the mill in condition so as to start to run?

A. The 15th of July.

Q. Now, Mr. Phelps, as to these logs that were carried over. Do logs depreciate at all when carried over?

A. Yes.

Q. At that time, when you found that you could not use these logs yourself, by reason of not having the mill completed, was there any market in which you could have sold the logs during that time?

A. I don't know of any.

Q. What other mills were there in that vicinity?

A. There was only one other mill below.

Q. How far was that?

A. The Panhandle mill at Ione.

Q. Do you know whether they were supplied with logs or not for that year?

A. Yes, they were supplied. I think they shut down early in the season.

(Testimony of M. A. Phelps.)

Q. How is that?

A. I think they had logs on hand when they shut down.

Q. Could you have sold them to any inland mill or any mill other than on the river?

A. I don't know of any place where I could have sold them.

Q. Could they have been marketed in Spokane or any place like that?

A. Well, they could have been marketed here if they was here, possibly.

Q. What I mean is, could they have been carried to any of these other mills and sold at a price so as to have lessened your damages?

A. No.

Q. Now, state what depreciation would occur in the logs?

A. Pine logs, the sap will—

Q. (Interrupting). Were there any pine logs in this case?

A. The sap will blue, and will make stained lumber.

Q. In what way does that affect the value of the lumber?

A. Well, about fifteen or twenty per cent depreciation.

Q. Is that in the value of the product from the logs?

A. Yes; probably more than that.

Q. How is that?

A. Probably more than that, even.

(Testimony of M. A. Phelps.)

Q. What, if any, loss occurs with reference to logs getting away or escaping and sinking?

A. A certain class of logs, they will sink, and, of course, more or less that you will lose, anyway.

Q. What class will sink?

A. Why, a certain class of pine and tamarack.

Q. What class of pine?

A. Bull pine.

Q. Was there any bull pine among those?

A. Not a great many.

Q. Was there any?

A. There was some, yes.

Q. Was there any tamarack?

A. Yes.

Q. How extensive was the tamarack?

A. Oh, there might have been ten or fifteen—ten per cent, probably.

Q. These logs that remained, what is the fact, Mr. Phelps, as to whether any of them did or did not blue?

A. They did blue.

Q. Have you examined them in that respect?

A. Examined the lumber that is coming from them.

Q. You are cutting the lumber now, are you?

A. Yes.

Q. To what extent has the damage appeared?

A. I should judge it would be fully twenty per cent on the pine, twenty per cent of the pine.

Q. That is, there would be that much depreciation in the value of the lumber?

A. I should think so, yes.

(Testimony of M. A. Phelps.)

Q. Does that blueing occur on the tamarack?

A. No.

Q. Does it occur on the bull pine?

A. Yes.

Q. And what other class of logs were there, there at the mill, and in the river?

A. Some red fir.

Q. Would that be affected or was it affected?

A. No.

Q. What percentage or what proportion of these logs that had to be carried over were pine?

A. I should judge about sixty-five or seventy per cent.

CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Is this the first saw mill that you have owned?

A. No, sir.

Q. How long have you been engaged in the saw mill business?

A. Twenty-five years.

Q. Twenty-five years?

A. Yes.

Q. How many different mills have you owned, if you know?

A. We have owned three besides this, I think, and then we have considerable cut by contract.

Q. How many other companies are you interested in at the present time?

A. None.

(Testimony of M. A. Phelps.)

Mr. McCARTHY: I also desire this marked for identification.

Another paper referred to by counsel marked PLAIN-TIFF'S EXHIBIT 40, for identification.

Q. State, if you know, what it is?

A. This is a copy of the boiler plant.

Q. Do, or do you not, identify that instrument as being one which you had and which was present at the same time the instrument dated September 15th, and introduced here as being the preliminary contract to which Mr. Williams referred as being signed, do you or do you not remember this instrument as being present at that particular time?

A. I don't remember; it might have been there.

Q. Was there one similar to that, at least?

A. Well, there was a couple there and some specifications, but I don't know whether it was that or not.

Q. Does this resemble it in appearance?

A. Well, in appearance it would.

Q. And as to this other instrument, does this resemble the instrument entitled "General Specifications," which you and Mr. Hubbard had present at that time on September 15th?

A. I couldn't say. I do not remember whether it was that or not.

Q. Was it an instrument consisting of several pages, something similar to this?

A. I can't say that, either. I don't remember that, although I do remember some general specifications, but I can't remember them.

(Testimony of M. A. Phelps.)

Q. I would refresh your recollection. Do you not, or do you remember of Mr. Hubbard borrowing your copy from you for the purpose of securing the Dalkena Lumber Company contract?

A. I don't remember it.

Q. Well, have you in your possession a copy similar to this?

A. I don't think I have.

Q. Now, Mr. Phelps, with reference to the exhibit being this instrument dated September 15th, and which has been presented here as Defendant's Exhibit 7, you may state when these words: "As per Specifications 10,915 attached," when were these words written in?

A. It was the second time Mr. Hubbard was here, in November.

Q. That is, when Mr. Hubbard came out in November.

A. This up there, I believe.

Q. These words: "F. O. B., Cusick"?

A. Yes.

Q. The contract had originally read: "F. O. B., Eau Claire, Wisconsin"?

A. Yes.

Q. And, when Mr. Hubbard came here, it was changed to read that the delivery should be Cusick, Washington?

A. The talk was all the time F. O. B., Washington, but I think that was F. O. B.—there was a freight allowance, but I wanted F. O. B., Cusick, Washington.

(Testimony of M. A. Phelps.)

Q. Instead of Eau Claire, and so Mr. Hubbard consented and changed that in there?

A. It made no difference, except if there was a wreck.

Q. By that, you wanted Mr. Hubbard or his company to assume the responsibility for accidents or wrecks?

A. Yes.

Q. Then you required Mr. Hubbard to show that on there, and place the words: "As per specifications"?

A. This up here I asked him, but that I don't suppose he wrote in there himself.

Q. It was written in at your request, was it?

A. I can't say whether it was my request. It was wrote in when he was there.

Q. Have you any definite recollection as to that?

A. No.

Q. This page entitled "Terms" being a part of Defendant's Exhibit 20, commencing and reading: "Terms, freight, cash on receipt of Bill of Lading, invoice price 5 days"—and so forth, and signed by yourself and the McDonough Manufacturing Company, to what does that word "Terms" refer, with reference to the instrument dated on September 15th?

A. Well, it refers to the payment of the machinery.

Q. That is, in this first one, the time of payment was left indefinite?

A. Yes.

Q. And in the instrument which you executed in November, why, you fixed definitely the time of payment?



(Testimony of M. A. Phelps.)

A. That is it.

Q. And at the time this instrument was signed by yourself and Mr. Hubbard, being the last page on this instrument referred to as Defendant's Exhibit 20, at the time these other 39 pages were attached, were they?

A. I think so.

Q. Now, you say this boiler was—or the three boilers were ordered at that time, were they?

A. We decided on three boilers at that time, yes.

Q. Well, what does this paragraph here mean: "2 72x8 Muskegon boilers"?

A. Well, it was left as it was originally, called for two boilers because he hadn't got the exact price, I think, on the other, although it was to be a proportionate price for the two—that is, one and a half more.

Q. Where was he getting the two at that time from, did he say?

A. I suppose from the Muskegon people.

Q. Who do you mean by the Muskegon people?

A. The Muskegon Boiler Works.

Q. Of Muskegon, Michigan?

A. Yes, sir.

Q. That is a separate manufacturing concern from the McDonough Manufacturing Company, isn't it?

A. I would not state positively about that.

Q. You say, according to the contract that the McDonough Manufacturing Company were to draw the plans for your mill, were they?

A. Yes, sir.

(Testimony of M. A. Phelps.)

Q. From instructions given by you as to the location of the boiler plant and the different machines, were they to draw it from instructions which you were to furnish?

A. No, sir.

Q. They were not?

A. No, sir.

Q. How were they to draw it?

A. They was to draw the complete plans of the mill, which would be subject to our approval.

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Phelps, these pine logs, you say you had to carry over, what was the value of these logs per thousand at Cusick, or where the mill is?

A. Where the logs were laying, about eight dollars per thousand.

Q. How early in the spring, in the operation of mills, in this country, can you begin the curing of lumber?

A. Why, always in March, usually along the 1st or the 20th.

Q. Now, explain to the jury why it is that you did not cut after the 15th of September, in the fall?

A. Yellow pine lumber should be cut before the 1st of August on account of its liability of blueing, lumber blueing after that time, and lumber will not dry after the 15th of September in order to be shipped that same season.

Q. Well, now, if the logs are cut into lumber, the pine logs are cut into lumber after the 15th of September, do you escape the blueing by cutting them into lumber?

(Testimony of M. A. Phelps.)

A. You do not.

Q. What occurs then, if they should be cut into lumber?

A. It would be sadly blued.

Q. Blue the same?

A. Blue the same.

Q. Mr. Phelps, look at this piece of wood that I hand you, is that pine?

A. That is pine.

Q. Does that show the blueing that you have been referring to in the logs?

A. Yes.

Q. And what is it that indicates the blueing?

A. These streaks. This sap is not all blue, but it is a little dozy.

WHEREUPON the piece of lumber referred to by the witness was marked DEFENDANT'S EXHIBIT 41, for identification.

Q. When did you shut down, in the year 1911?

A. The last of September.

Q. Now, did you at any time talk with Mr. McIntyre with reference to the damage that you were going to sustain on logs that were carried over?

A. I did; several times.

Q. What did you tell him?

A. I told him there would be damage to a considerable extent, if we couldn't get to run by May.

Q. What I mean is with reference to the manner in which the logs would be damaged?

A. Yes.

(Testimony of M. A. Phelps.)

Q. What did you tell him?

A. I told him lumber cut after a certain date would blue; also lumber cut after a certain other date couldn't be shipped until the following year.

Q. What, if anything, did you tell him about the effect it would have upon the logs that were carried over?

A. They would blue, also.

Q. This six million feet of logs that you had in sight, with a band mill, does it produce more lumber or less lumber?

A. More lumber.

Q. And how much would about six million feet produce in feet?

A. An ordinary run of logs produces right at twenty-five per cent.

The question is simply about how much lumber would have been manufactured out of the six million feet of logs?

A. Why, there is an over-run of practically twenty-five per cent.

Q. Mr. Phelps, had this machinery been furnished within the time stipulated, would you have had it installed in the mill ready for operation by May 1st?

A. Yes.

Q. Mr. Phelps, was the centering mandrel for the filing room furnished?

A. No.

Q. The boxes that were furnished with this ma-

(Testimony of M. A. Phelps.)

chinery, what is the fact as to whether they were planed or not?

A. Very few of them.

Q. And what do you refer to as the boxes?

A. The castings of the boxes that the shafts run in.

Q. This band wheel that you refer to, Mr. Phelps, in the complaint, in what way was that defective and what did you have to do with it?

A. Two or three spokes that was loose, and we had to take it out and send it out to the Union Iron Works to have it fixed.

Q. What expense did you incur by reason of that?

A. About one hundred and seventy-five dollars. The wheel, also, was untrue; the frame of the wheel was untrue.

Q. Mr. Phelps, what was the rental value, if you know, of a mill of this size per day?

Mr. McCARTHY: Now, if the Court please, we would like to reserve an exception here and object to going into that question as long as he is going into the market value of the logs and timber.

The COURT: I will sustain the objection unless it is confined to this particular mill in that locality.

Mr. WILLIAMS: Yes, I should have stated that. I will add to that question.

The COURT: And also at the particular time.

Mr. WILLIAMS: Q. This particular mill in that locality and at that time, between May 1st and July 15th, 1911?

A. One dollar a thousand.

(Testimony of M. A. Phelps.)

Q. What do you mean by "A dollar a thousand"?

A. A thousand feet of lumber cut.

Q. That is, its capacity?

A. Yes.

Q. And what was the capacity of this mill?

A. Fifty to sixty thousand feet; that is, in ten hours; double shifts would be about one hundred and five thousand, perhaps.

Q. You are familiar, are you, with the rental value of saw mills?

A. Yes, sir.

Q. What is the time required for freight to come from Eau Claire, Wisconsin, to Cusick?

A. I think most of that—about six days.

Q. Six days?

A. Six or eight days.

Q. And what is the difference in time of freight—necessary for freight to travel from Muskegon

A. It is a little longer.

Q. Can you give the time?

A. Probably two or three days longer.

CROSS-EXAMINATION—(*Continued.*)

By Mr. McCARTHY:

Q. Mr. Phelps, what is the nearest saw mill to your mill at the present time?

A. Dalkena Lumber Company, I think.

Q. When was that built?

A. The mill that is there at the present time was built in the fall and winter of 1910 and 1911.

(Testimony of M. A. Phelps.)

Q. It was started about the same time yours was, was it?

A. I think it was started before.

Q. That is, the machinery was installed in the building, both?

A. I can't say about that.

Q. About the same time?

A. Yes.

Q. How far is that from your mill?

A. Seven miles.

Q. Which way?

A. South.

Q. What is the next nearest saw mill to your mill?

A. Well, I couldn't say what the nearest is, I am sure; possibly the one at Newport.

Q. Which one?

A. Well, there is the Fidelity Lumber Company and another one at Newport.

Q. Fidelity Lumber Company mill at Newport?

A. I wouldn't want to say that that is the nearest one. I don't know.

Q. How far is that from your mill?

A. About twenty miles.

Q. Which way?

A. Southeast.

Q. Twenty miles southeast?

A. Yes, sir.

Q. And what is the next nearest mill north?

A. I don't know. I think at Ione.

Q. How far is that away?

(Testimony of M. A. Phelps.)

A. About thirty miles.

Q. North?

A. Yes, sir.

Q. Do you know when the Fidelity Lumber Company commenced sawing at their mill?

A. No, sir; I do not know the date.

Q. You know they were sawing in February, commenced?

A. I couldn't say whether they was or not.

Q. Do you know how late they sawed the fall before, in the fall of 1910?

A. No.

Q. But you would not know whether they were sawing in December or not?

A. No.

Q. Do you know when the Dalkena mill started sawing?

A. I do not know.

Q. Do you know what time they quit sawing?

A. They quit sawing—I don't know when they quit sawing.

Q. Do you know when the Ione Lumber Company started sawing?

A. No.

Q. Do you know when they quit?

A. No, sir; I don't know that.

Q. Was this mill you were building at Cusick a new mill, or had you had a mill there previous to that?

A. No, sir; we didn't have any previous to that.



(Testimony of M. A. Phelps.)

Q. You say you have engaged in the saw mill business something like twenty-five years?

A. Yes, twenty-five years ago this spring I was first in it. There have been times I have not done anything at it.

Q. When did you send this band wheel to the Union Iron Works to be corrected?

A. It would be in July.

Q. In July; what time in July?

A. I would think the last part of July.

Q. How long had you been running the mill with the wheel?

A. I couldn't say positively. I would say about two weeks.

Q. At the time that the McDonough Manufacturing Company took your order, is it, or is it not a fact that Mr. McIntyre, who afterwards entered their employ, was representing a competing firm that bid on your mill?

A. I never saw Mr. McIntyre until after Mr. Hubbard brought him into the office.

Q. Did he or his company make a bid on the building of your mill?

A. I don't know what company he was connected with excepting the McDonough Manufacturing Company.

Q. Now, in your statements concerning the damage and the cutting of lumber, did you, or did you not, ever write a letter to the McDonough Manufacturing Company stating that as an item of damage?

A. That there was an item of damage?

(Testimony of M. A. Phelps.)

Q. Yes.

A. I think we wrote them that on account of their machinery not being delivered that we would be damaged.

Q. But did you state in some of your letters what the nature of your damage was?

A. Well, I couldn't say positively about that.

Q. You don't remember that?

A. No, I may have.

Q. You may have stated it and may not?

A. Yes.

Q. Did you ever inform the McDonough Manufacturing Company, other than through Mr. Intyre, did you ever inform them by letter that you were cutting lumber

A. That we were cutting lumber?

Q. Yes.

A. I don't think we ever informed them that we were cutting lumber.

D. Did you ever inform them that you were cutting logs?

A. I can't say.

Q. Did you ever inform them by letter of the possible damage by blueing?

A. I wouldn't say positively about the blueing.

Q. You don't remember what item of damage you mentioned, but just that you were going to be damaged?

A. I wrote them, I think, several times, that we would be damaged on account of the machinery not getting there.

(Testimony of M. A. Phelps.)

Q. By laying off men, wasn't it, that you mentioned?

A. I could say just what.

Q. Mr. Phelps, do you own all the stock in the M.

A. Phelps Lumber Company?

A. I do not.

Q. What portion of the stock do you own?

A. About fifty per cent, I suppose; maybe a little less.

Q. Does Mr. Bond own stock also?

A. Why, Mr. Bond has a working interest in a small amount of stock, or did have.

Q. How long do you say, approximately, Mr. Hubbard was in Spokane at the time he took your order on September 15th?

A. I should say a week, possibly ten days. I could not state positively the time.

Q. Had he been in conference with you most every day?

A. Why, no, I don't think every day, no. He was in the office quite often.

Q. Did he not take a trip up to Dalkena and then come back to your office again before he went east again?

A. If I remember right, he went from Dalkena to Cusick and then he went—I think then that was the last time I saw him, at that time.

Q. Well, about how long was that after you signed up this order dated September 15th?

A. Two or three days.

Q. Then he was about the city and this mill two or three days anyhow, after you signed the order?

A. Well, I should say, if I remember right, this pre-

(Testimony of M. A. Phelps.)

liminary agreement was entered into on Monday, I think it was Monday, and I should say that he was at Cusick possibly Wednesday of the same week.

Q. What proportion of the logs did you say were backed up in the Kalispel slough, of your logs?

A. At the present time?

Q. No, on May 1st.

A. May 1st there was about two million and a half feet.

Q. Could you get them out at that time

A. Well, I don't—let's see—May 1st—I forget just the time we did take them out.

Q. Wasn't it July 24th when you got them out?

A. We got them out before that.

Q. You did?

A. Yes, sir; I think so.

Q. Do you know?

A. I could look it up.

Q. But you couldn't get them out before May 1st on account of the Dyking Commission?

A. I wouldn't want to say that.

Q. Could you or could you not?

A. I couldn't tell the date.

Q. Were you not prevented from getting them out by the Dyking Commission or Board for a time?

A. Well, the water was at such a stage at one time we couldn't get them out, but later on we could.

Q. Did you offer to sell your logs to the Dalkena Lumber Company, try to get them to manufacture them?

A. No, sir.

(Testimony of M. A. Phelps.)

Q. Did you to the Fidelity Lumber Company?

A. No, sir.

Q. Nor to the one at Ione?

A. No, sir.

Q. Mr. Phelps, you first began corresponding with the McDonough Manufacturing Company concerning the submitting of plans and an offer and bid for a proposed mill some time in June or July, 1910

A. Possibly, I think so.

Q. And when, approximately, that year, did the big forest fires occur?

A. August.

Q. And, what was stated with reference to the forest fires at that time, or during the visit of Mr. Hubbard here on September 15th; what was said with reference to forest fires and the possibility of your doing any sawing?

A. I don't know; I don't remember that there was anything; possibly might have.

Q. You did not, at that time, have any of your logs cut, you claim, that is, on September 15th, when Mr. Hubbard took the contract first?

A. No.

Q. Is it, or is it not, a fact that you stated at the time to certain persons, machinery men, representatives of machinery houses, who came here to bid on the contract, that you might let the contract, but did not want the date of delivery fixed and this date of April 1st was made or suggested by Mr. Hubbard?

(Testimony of M. A. Phelps.)

A. Along early we suggested we might build the mill the following season, but after that, before November, we concluded that we would build it as soon as possible and make a good cut the next year.

Q. Then, at the time of signing up this contract, providing for delivery on April 1st, you did not know at that time whether you would really cut any of your logs at all or not?

A. That preliminary agreement, I do not know whether that was talked about at that time.

Q. But you were considering the advisability at that time of whether it would be wise to cut any on account of these burnt-over logs coming into the market?

A. I think it was before that time we were talking about it.

Q. Before that time?

A. We might have been about that time or before it; I think it was before that time.

Q. What effect would that have upon the market, the fact that forest fires had taken place?

A. I don't know that the forest fire—I don't know what effect it did have that I can state.

Q. Well, doesn't lumber which is burnt over have to be sawed within a reasonable time after it is burnt over?

A. It should be.

Q. That would result in throwing a considerable quantity of lumber on the market, would it not?

As a matter of fact, I don't think it did.

Q. But will it not, ordinarily?

(Testimony of M. A. Phelps.)

A. Well, not necessarily, no.

Q. Well, how do you explain that fact when you see the logs are required to be cut up within a reasonably short time after, and yet that it will not place lumber or timber on the market

A. Well, they might cut the logs but hold the lumber.

Q. That is, keep them as logs?

A. Well, they could do either; they could manufacture the logs as lumber and hold the lumber for market.

Q. And hold the lumber for market?

A. Yes.

Q. But will they not then have their investment tied up in that enterprise?

A. Well, that would depend.

Q. They would not; well, how will you explain that would depend?

A. They might have their investment tied up in the cost of the cutting. I don't think that there was any great amount of lumber cut on account of the forest fires last year.

Q. Well, but wasn't it naturally anticipated after the forest fires in 1910, that a great amount of lumber would be thrown upon the market.

A. I don't know.

Q. At the time you commenced the construction of this mill, Mr. John R. Bond, whom we have mentioned here, was employed as foreman, was he not, or millwright?

A. At the time we began construction?

Q. Yes.

(Testimony of M. A. Phelps.)

A. He was employed; I don't know that we ever fixed his position.

Q. Well, what were his duties?

A. Well, his duties were generally—he was looking after our business at that place.

Q. What was your business; what do you mean by that?

A. It was lumbering.

Q. Are you in any other business than lumbering?

A. In the market business, but he didn't have anything to do with that, though.

Q. Well, what were his duties then with reference to this mill?

A. You mean the construction of the mill

Q. Yes.

A. Well, he had an oversight over the construction, installed the machinery, and the last part of the construction; he had entire charge of it.

Q. Why did you afterwards substitute Mr. Kelly in the construction of the mill?

A. I did not.

PLAINTIFF'S EXHIBITS 42 to 53, inclusive, were admitted without objection, EXHIBITS 42, 43 and 44 being read into the record.

Q. After writing that letter, Mr. Phelps, on November 26th, concerning the size of the shafting, did you ever write afterwards and complain that the shaftings were not of the proper dimensions?

A. I can't say positively. I remember that question of shafting.



(Testimony of M. A. Phelps.)

Q. And, you remember having written that letter authorizing them to use the sixteenth?

A. I think I did. They claimed they couldn't get the proper size of rough material to make it.

EXHIBIT 45 was read into the record.

Q. Now you claim, Mr. Phelps, that you instructed the plaintiff company to leave out the machine known as the hog, do you? First, I might explain your mill faces east and west approximately, does it not?

A. Yes.

Q. And the last mill is on the north side, is it not?

A. Yes.

Q. Now, the refuse, as originally planned, was to be carried from the lath mill through a conveyor, which is a trough with a chain into it, and emptying into this hog, was it not?

A. I don't remember whether it was emptying into the hog or emptying into the other conveyor; I can't remember.

Q. Now then, the chain in the conveyor was not made necessary by defective plans, was it

A. Yes.

Q. Well, just explain to the jury how that was?

A. There was one of the lath machines that it did not provide for, taking care of the refuse. That matter I think was taken up with Mr. McIntyre and he stated that we could take the edgings and carry them to the main conveyor, which would be entirely impracticable.

Q. That is, the refuse from the lath mill was falling into a conveyor which ran to the boiler, wasn't it?

(Testimony of M. A. Phelps.)

A. No, there was one of the lath machines that they didn't provide a conveyor for.

Q. Now, Mr. Phelps, you don't mean that. You mean with reference to your letter—how does it occur that this—that the defective plans made necessary the change in the hog and lath mill machinery?

A. Was that letter read?

Q. Yes, I have read it. It reads this way: "Regarding the matter of the change in the lath machine and hog, would say that this was necessitated on account of defective plans."

A. Well, that is correct, but probably more plans that was lacking to the complete the job.

Q. That is to say, the plans were not in sufficient detail so as to show where this hog would stand, do you mean?

A. I wouldn't want to say that, but I would say that the plans were defective in that it was not provided—sufficient facilities to take care of the refuse in the lath mill.

Q. Well, was there not a conveyor running from the lath mill into some place, according to the plans as originally drawn?

A. There was from one machine.

Q. From the lath machine, where did the conveyor run according to the original plans that were submitted?

A. I couldn't tell without going over just the point where it emptied in.

(Testimony of M. A. Phelps.)

Mr. McCARTHY: I would like to have these marked for identification, these four pieces of paper.

WHEREUPON the four pieces of paper, referred to by counsel, were marked PLAINTIFF'S EXHIBITS 54, 55, 56 and 57, for identification.

Q. Mr. Phelps, I will ask you to examine Plaintiff's Exhibit for identification, marked Exhibit 55, and state if you know whether that approximately represents the first floor, machinery floor, of the plans submitted to you on or about October 3d or 5th?

A. It might be; I couldn't say; there are so many mills, the plans are similar.

Q. Examine them and see if you know whether or not——

A. (Interrupting). I would state that was not the plans that were adopted.

Q. State whether or not these plans were offered to you for approval, or were not?

A. I could not say that these were the plans. I know that was not the plans that were adopted.

PLAINTIFF'S EXHIBITS 46, 47, 48, 49, 50, 51, 52, 53 were read into the record.

Q. You stated, Mr. Phelps, last night that no instructions were to come from you as to the manner in which the McDonough Manufacturing Company should draw the plans, as I understood your remark

A. Come from me?

Q. Come from your company?

A. Only in a general way. The general idea of what we was going to build was known, but the plans was to

(Testimony of M. A. Phelps.)

be drawn by them, which should be submitted to our approval.

Q. In your first instruction or letter to them, on which side of the mill did you state that your boiler house would be built?

A. I think on the north side.

Q. Is it on the north side now?

A. No, sir.

Q. Did you instruct them it would be built on the south side?

A. Yes, before the last contract.

PLAINTIFF'S EXHIBIT 58 was admitted in evidence without objection and read into the record.

Q. Is your mill a right-hand mill or a left-hand mill?

A. Left-hand mill.

Q. Then, what would be the right side of the mill, the north or the south?

A. I would not know what you would mean by that question?

Q. Well, which way does your mill face?

A. Faces east and west, nearly so.

Q. And, what do you mean by the right-hand side of the mill and left-hand side?

A. A right-hand mill is when one stands facing the saw, the carriage is on the right-hand side.

Q. Then, on that explanation, would the north side of your mill be the right-hand side or the left-hand side?

A. Well, that would be a question that would be hard to answer.

(Testimony of M. A. Phelps.)

Q. Did you at first intend to use a burner for the main conveyor, to dispose of the refuse, or to have an open fire-pit?

A. That was not decided; not until 'way later.

Q. Was that the only instruction which you ever gave the McDonough Manufacturing Company with reference to your wishes as to the arrangement of the machinery and how you desired the plans drawn?

A. The first idea of the mill was in facing west, was to have the boiler plant on the right-hand side, and afterwards, shortly afterwards, we found it was impracticable to have it on that side on account of the lay of the land, and it was changed to the other side of the mill. That was the only change of any account that was made in the original idea.

Q. Did you state the date on which these instructions were given?

A. I could not, offhand.

Q. What do you mean in your letter of December 1st, 1910, when you said "Regarding engine, would say that I am positive that it will be a right-hand engine and you may figure that way unless we advise you by wire in the next day or two"?

A. Well, in a sawmill, engines are built right and left hand, and when they asked I was not absolutely positive whether it was right or left-hand engine; that was something I was not thoroughly familiar with myself and I had to get that information.

Q. Mr. Phelps, is it, or is it not true, that when Mr. Hubbard came out here to see you about this contract in

(Testimony of M. A. Phelps.)

the early part of November, 1910, that you sought to have Mr. Hubbard cancel the contract altogether?

A. No, sir.

Q. It is not true?

A. We had a talk with regard to these matters and it would seem that he wanted to cut everything down in regard to size.

Q. Just never mind that. State whether or not it is true or not that you sought to have him cancel the contract.

A. I did not seek to have him cancel the contract.

Q. You were anxious to have the machinery forwarded at that time then?

A. Yes, and was anxious to have the plans and contract drawn covering our previous talk.

Q. Well, then, if the plans had been drawn in accordance with your contract of September 15th and the machinery was coming on that order, and the plans corrected, there was no other desire or motive on your part to cancel the contract, was there?

A. If the plans had been drawn and approved by us, there might not have been.

Q. In your letter and also in the telegram you sent under the same date, being the date of October 13th, 1910, you used this language: "Wire received. Unsatisfactory. If you cannot authorize your Mr. McIntyre to proceed to Cusick and make plans and specifications for mill according to our understanding with your Mr. Hubbard, and have a contract drawn covering our understanding with him, you may cancel our order

(Testimony of M. A. Phelps.)

for machinery. If we do not hear from you by the 15th we shall consider the order cancelled." What order did you refer to there?

A. I suppose to the machinery.

Q. You mean, the instrument dated September 15th?

A. Probably, yes.

Q. You don't know what you meant, then?

Mr. WILLIAMS: That is apparent from the contract, that it is the order for the machinery; no matter what it is named.

RE-DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. This right-hand or left-hand engine proposition, is that the same matter that is referred to in this letter of November 21st, being Defendant's Exhibit 21, being letter from the McDonough Manufacturing Company—the question about it being a right-hand or left-hand engine—is that the same subject that is referred to there?

A. I think so.

Q. State whether this letter of November 21st whether there was any other correspondence between yourself and Mr. Hubbard or the McDonough Manufacturing Company, between November 4th and November 21st except this one letter, Exhibit 21?

A. I do not know of any.

Q. What is the fact as to whether the question as to whether this should be a right-hand or left-hand engine was left open at the time Mr. Hubbard was here in November?

A. The matter of a right-hand or left-hand engine should have been decided by them in their plans.

Q. Now, Mr. Phelps, about this question of the location of the boilers, which side, when was that determined upon with reference to the time Mr. Hubbard was here in November?

A. I think it was before that. I would not be positive, but I think it was before.

Q. You were asked concerning your letter of November 26th relating to the size of shafting. What was that controversy, Mr. Phelps?

A. It seems that they proposed to furnish afterwards a shafting that was from one-sixteenth to three-eighths of an inch smaller and in the correspondence they said that shafting, as a rule, was turned one-sixteenth smaller than the size of the rough stock. That is, a two-inch shaft would be turned about one and fifteen-sixteenths.

The COURT: You consented to the change, in any event?

A. I consented to the change except the large difference of three-eighths; I didn't consent to that change.

#### RE-CROSS EXAMINATION.

By Mr. McCARTHY:

Q. Well, was there any shaft furnished which—any three-eighths shafting furnished which were cut down?

A. Not that I know of. They proposed to furnish some three-eighths.

Q. That is all; you don't know of any. What did you say about the McDonough Manufacturing Company



(Testimony of M. A. Phelps.)

making up a right-hand engine or a left-hand engine, just as they chose?

A. I said it was up to them to submit those plans of a right or left hand engine, for our approval.

Q. That is, you say they should have gone ahead without asking you first, and made either a right or left hand engine showing in the plan, and then sent it to you and then you would have approved it or rejected it?

A. No, sir; I didn't say that.

Q. Explain what you mean by that?

A. I said they should have submitted plans of what they proposed to furnish.

Q. How could they draw the plans of a right-hand or left-hand engine without knowing which one was desired?

A. The location of the boilers in connection with the engine, also the main drive shaft in the mill would fix that.

Q. That is, would fix it without any information coming from you?

A. Well, it would be subject to our approval.

Q. That is, you would have them go ahead and perfect plans and then afterwards reject them if you desired a left-hand engine; that would be the idea?

A. Yes.

Q. Why didn't you tell them when you wrote this letter in which you said: "We will notify you in the next few days as to whether we desire a right-hand or left-hand engine," why didn't you tell them that then?

(Testimony of John McLeahany.)

A. Mr. Hubbard, when he was here, said he would have Mr. McIntyre on the ground very often and take up all of these matters.

Q. Now, when you wrote this letter in which you state that you feel positive that the engine would be a right-hand engine, and they might figure that way unless you advised them within the next few days, why didn't you write to them and tell them that you were leaving that to them and that they could make either a right-hand or a left-hand drawing?

A. They was two thousand miles away and time was important.

Q. In other words, why didn't you tell them that was the situation, if you didn't intend to tell it one way or the other.

A. If we could help them out any way we was willing to do it by giving them information.

Q. How could they proceed to drawing plans of a right-hand engine or left-hand engine without knowing what kind you would select?

A. We did select the kind finally.

Witness excused.

JOHN McLEAHANY, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. State your name, Mr. McLeahany?

A. John McLeahany.

Q. What is your business?

(Testimony of John McLeahany.)

A. Working around the woods.

Q. Are you employed by the Phelps Lumber Company

A. Yes, sir.

Q. How long have you been employed by that company?

A. Five or six years.

Q. And during 1910 and 1911, what position did you have with the company?

A. What I held in 1911, the first year?

Q. And what position have you now?

A. I am working in the mill this summer.

Q. And what is your particular position in the mill?

A. Working on the deck.

Q. Mr. McLeahany, look at this exhibit 41, for identification, and state if you saw that timber sawed?

A. Yes, sir.

Q. When?

A. Yesterday, about 2 o'clock.

Q. And what material is it; what character of timber is it?

A. That is yellow pine.

Q. Do you know whether that came from the logs that were carried over on the bank from 1911?

A. Yes, sir.

Q. It is one of them, is it?

A. Yes, sir.

Q. Referring here to this discoloration, what do you call that, in referring to lumber?

A. Call it blueing.

(Testimony of John McLeahany.)

Q. How far does this blueing extend into these logs that are there on the bank?

A. A strip about four feet long.

Q. Would that be on each end?

A. Yes, sir.

Q. And this is the condition in which it came from the saw, after being sawed?

The piece of timber previously identified admitted in evidence and marked DEFENDANT'S EXHIBIT 41.

Q. Mr. McLeahany, what is the effect upon yellow pine of being carried over from one season to the next

A. The most of it will all blue, most all of it.

Q. In what way does it affect white pine; does it blue?

A. Not so much.

Q. Does it blue at all?

A. Blues a little.

Q. What other way does it affect that, other than blueing?

A. Checks it quite a lot.

Q. What do you mean by "checks"?

A. Some checks.

Q. Can you explain that more particularly to the jury?

A. Some checks, long checks in the sides and ends.

Q. You mean something in the nature of a splint or splintering?

A. Yes, sir.

Q. How many logs in feet did there remain there in the mill yard and in the mill pond right at the mill, at

(Testimony of John McLeahany.)

the beginning of the sawing season this spring? I mean of the logs that were left in the fall and winter of 1910?

Mr. McCARTHY: It is still indefinite without fixing a time at which you conclude, other than saying "the season."

Mr. WILLIAMS: Well, I will put it March 1st, of this year, then March 1st?

A. Well, I should judge one million five hundred thousand; between that and two million.

Q. One million five hundred thousand to two million

A. Yes.

Q. Have you made any estimate of the number of these logs, amount of these logs, that are down the river, Pend d'Oreille River, about half a mile, or in the mouth of the Kalispell River; have you made any estimate of that?

A. About one million five hundred thousand of those.

Q. What percentage of these logs that were there were yellow and white pine?

A. Sixty-five per cent.

Q. Do you know how this deterioration from being carried over, how it affects the market value of the logs or the lumber; do you know?

A. No, I don't think so.

Q. You are not familiar with that?

A. No, sir.

Mr. WILLIAMS: You may inquire.

(Testimony of J. R. Bond.)

Mr. McCARTHY: No questions.

Witness excused.

DEFENDANT'S EXHIBITS 59 to 68, inclusive, were admitted in evidence without objection and read into the record.

J. R. BOND, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. What is your name?

A. J. R. Bond.

Q. Where do you reside?

A. Cusick.

Q. What is your business?

A. I have been working for the Phelps Lumber Company up to the 1st of April.

Q. Are you in their employ now?

A. No, sir.

Q. Were you in their employ in the year 1911

A. Yes, sir.

Q. And in the year 1910; that is, the latter part of the year 1910, from July?

A. Yes.

Q. What particular position have you had with that company, Mr. Bond?

A. Why, no position has ever been assigned to me. I have acted as general foreman in the first part of it and I supervised the construction of the mill, I believe, under Mr. Kelly's plans.

(Testimony of J. R. Bond.)

Q. Were you there all the time during the construction of the mill?

A. From the time the concrete and the foundation was put in, I was there all the time.

Q. Were you there at the time Mr. Hubbard was in Spokane, in the fall of 1910.

A. Yes, sir.

Q. Were you present at any of those conversations?

A. I was present at a sort of a meeting held at Cusick with Mr. Phelps and Mr. Hubbard.

Q. When was that, Mr. Bond, with reference to the first visit that he made some time in the middle of September?

A. Why, I should judge it was the latter part of September.

Q. And who were you representing in being present at the meeting?

A. The Phelps Lumber Company.

Q. What experience have you had in the sawmill business, Mr. Bond.

A. Why, I have operated a lumber manufacturing concern for nearly twenty years.

Q. Have you ever had anything to do with the installation of machinery?

A. Yes, sir.

Q. Have you had anything to do prior to this time with the laying out of plans?

A. Yes, sir.

Q. And who was acting for Mr. Phelps in the ques-

(Testimony of J. R. Bond.)

tion of laying out the plans and deciding on the machinery?

A. McDonough Manufacturing Company.

Q. What I mean is locally?

A. I was doing that.

Q. Now, in this meeting that was held in September, 1910, when you were present, what, if anything, was said at that meeting, Mr. Bond, with reference to the time the company expected to begin the operation of its plant, the location of its plant, and the amount of logs that they were going to procure?

Mr. McCARTHY: First, we would like to have that question segregated and then ask one question at a time. I would just like to have the question read:

The COURT: I don't think that entire question relates to special damages. I think I will sustain the objection.

Mr. WILLIAMS: Q. What, if anything, was said in that conversation with reference to the amount of logs that the company proposed to procure before May 1st, for the operation of its mill?

A. Between nine and ten million feet.

Q. Was that talked in the presence of Mr. Hubbard?

A. Yes, sir.

Q. What, if anything, was said as to the time that they wanted the mill in order to commence operations

A. Very early in the spring, about the 15th of March, or the first of April.

Q. What, if anything, was said in the conversation



(Testimony of J. R. Bond.)

at that time with reference to the sawing season, the time that they would be able to saw?

A. In regard to yellow pine, from the 1st of March to August.

Q. Well, what was said about the other?

A. White pine, considerably later.

Q. Was that talked with Mr. Hubbard?

A. Why, I couldn't say that it was talked directly to Mr. Hubbard.

Q. I mean in his presence?

A. Yes, it was talked in his presence.

Q. Can you give the date that this conference was had?

A. I can't give the date; it was the latter part of September, I should judge, or the 1st of October.

Q. And who was present besides yourself and Mr. Hubbard?

A. Mr. M. A. Phelps.

Q. Did you see Hubbard when he was here the second time?

A. I have seen him once since.

Q. When did you commence the operation of that mill in 1911?

A. I think it was the 17th of July.

Q. And what is the sawing season in that section?

A. On yellow pine it is the middle or last of August, from the first of March.

Q. And how about white pine?

A. White pine can be sawed later.

Q. How much later?

(Testimony of J. R. Bond.)

A. Well, until the ice would bother, or cold weather, perhaps in December.

Q. And what is the time that you can begin operations?

A. Well, the practical time is generally from the 1st to the 20th of March, sometimes it might be in February; all owing to the ice in the river.

Q. What time did you shut down operations in 1911?

A. I think the last day of September.

Q. The last day of September?

A. Yes, sir.

Q. Now, Mr. Bond, was there any market in that vicinity for saw logs that have been accumulated?

A. Not at the present time.

Q. I mean at that time?

A. No, sir.

Q. How long have you resided in that vicinity?

A. Six years.

Q. What business have you been engaged in while there?

A. Why, I operated a mill there for the Fidelity Lumber Company for one season, and I was working for them along the river from Newport to Ione for nearly a year afterwards, then I was in business for myself, selling lumber and sash and doors and building material, and constructing buildings of my own, from Newport to Ione, from July, 1911.

Q. In these different businesses, what, if anything, did you have to do with saw logs?

A. I have been conversant with their value; I have

(Testimony of J. R. Bond.)

bought timber for the Phelps Lumber Company, bought logs for them.

Q. What market was there at that time in that locality for saw logs?

A. There wasn't any at a price that we could have sold for without incurring greater damage than to have held them.

Q. In order to have sold them, what would have been necessary at that locality at that time?

A. We would have had to sell them at Ione, and they were not buying logs at all, and if they had bought them it would have cost us one dollar to drive them. They were buying logs at five dollars on track. Two dollars freight would have made seven dollars on their boom. We would have had to sell them at least for six dollars, so they could have driven them into their boom. That would have meant a loss of two dollars a thousand.

Q. You say they were not buying?

A. They were not buying.

Q. Was there any other place where there could have been a possible market?

A. Dalkena might have bought some, but I don't think so. You would have had to tow them up the river for that purpose and it would have cost a great deal more to have towed them up the river.

Q. Have you taken some photographs, Mr. Bond, as to the situation there, these banks, before starting the mill?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. Look at this one, is that a photograph which you took?

A. Yes, sir.

Q. State where that was taken and what that shows of the logs?

A. I wish to amend that. Mr. Wright took it with my instructions.

Q. Were you present?

A. I was present.

Q. Where was that taken from?

A. That was standing on the bank of the Pend d'Oreille River, looking across to the South Kalispell and down the Pend d'Oreille at the boom.

Q. That shows the logs at the south of the Kalispell?

A. Yes, and then in the distance the logs of this boom.

Q. What do you mean by that?

A. Part of this Fidelity Lumber Company.

Q. Does that photograph show any of the logs in the mill yard or the mill boom?

A. No, sir.

Q. Does it show any of them that are lying in the Kalispell River?

A. No, sir; only just this little portion of the mouth of the Kalispell River.

Q. Does that correctly represent the situation, as well as can be shown, from that point?

A. You have got to take and put one hundred and sixty acres of land in that size. It does not really convey the proposition.

(Testimony of J. R. Bond.)

Q. Mr. Bond, directing your attention to another photograph I hand you here, can you tell by looking at that photograph where it was taken?

A. No, I cannot.

Q. Does it show a part of the logs on the bank there at the mill?

A. Yes.

Q. Can you see from that photograph the deteriorated or damaged logs?

A. You can see the blue line around the log here.

Mr. McCARTHY: Now, if the Court please, I object to the introduction of that photograph, because there are three or four or a half a dozen logs at the end here and they might have been marked. No effort to show all of them.

The COURT: I suppose all the members of this jury have seen logs in the water and know what the end looks like.

Mr. WILLIAMS: I don't know whether they understand what the blueing is.

The Court: Practically all that shows is barked logs. The end of a log will stain; no doubt about that.

Mr. WILLIAMS: I offer in evidence this photograph that the witness has identified or referred to.

The COURT: It may be received, but I will advise the jury now not to pay very much attention to it.

The photograph identified by the witness, marked DEFENDANT'S EXHIBIT 70.

Q. Mr. Bond, what is the fact as to whether the ma-

(Testimony of J. R. Bond.)

chinery was received there at the mill as rapidly as you needed it for installation?

A. It was not.

Q. Had that machinery been received by March 15th, the date specified in the contract, could you have had it installed by May 1st?

A. If everything had been complete, we could.

Q. Was the building complete, ready for installation?

A. Yes, sir.

Q. Did you have a sufficient force for the purpose?

A. Yes, sir. I wish to amend the building part. The power house, we left the power house off from over the boiler until after the boilers were lowered inside.

Q. What was the reason for that?

A. On account of the extra cost of putting it in after the building was built.

Q. So as to leave room to get in?

A. Yes, sir.

Q. Are you familiar with what the value of pine logs was in that vicinity at that time?

A. Yes, sir.

Q. What was it?

A. Six dollars at the boom and eight dollars for yellow pine.

Q. Six dollars for white?

A. For mixed logs.

Q. And what for white pine?

A. Eight dollars.

Q. What portion of these logs were pine?

(Testimony of J. R. Bond.)

A. Well, that would be an estimate. I think seventy per cent.

Q. Do you know what the depreciation in value is in this class of timer, by reason of being carried over?

A. Well, it is from twenty to thirty per cent.

Q. And of what does that depreciation consist?

A. Of blueing and cracking of the ends, causes the trimming down of two feet in the length and thick slabbing.

Q. What do you mean by thick slabbing?

A. Well, you have to slab thicker than you do when the log is good and bright.

Q. That is, you have got to cut off more of the outside?

A. Yes, sir. And then the handling of logs on the deck. It takes about one-sixth longer to handle old logs on the deck than it does new logs.

Q. And this checking that you refer to, what is that?

A. Oh, it is splitting. I think the jury understands that.

Q. The opening of the logs on the end?

A. Yes, sir.

Q. During the time that you were constructing the mill, did you have any talk with Mr. McIntyre about the damage you were sustaining by reason of delay?

A. Yes, sir.

Q. Tell the Court what you said; what you told him?

A. Why, we explained thoroughly the damage it was to us about the buying of the timber, and the various other reasons, marked, and things of that kind.

(Testimony of J. R. Bond.)

Q. Did you explain to him about the logs that you were getting down?

A. Yes, sir.

Q. Now, after this machinery was finally received, what is the fact as to whether you got your mill ready as soon as possible?

A. We did; we exerted every effort.

Q. Now, about this band wheel. State what was wrong with that, Mr. Bond?

A. The lower wheel was out of balance and turned out of true; that is, it was not flat on the surface. The upper wheel, the automatic gears refused to work and run into the upper wheel. Before this it was out of balance, and upon that running into the wheel we shut down and had a man fix it.

Q. And where was that sent?

A. I think to the Union Iron Works. Mr. Phelps took care of that.

Q. That condition then, you say, existed before this piece ran into it; did that make it necessary it should be repaired?

A. Yes, sir.

Q. Was this repair made necessary by reason of this piece going into it or by reason of its further condition?

A. By reason of its further condition.

Q. Are you familiar with what the rental value was of mills in that vicinity at that time

A. Yes, sir.

Q. What was the rental value of saw mill property?

A. About one dollar a thousand.



(Testimony of J. R. Bond.)

Q. That is, of the daily cut?

A. Yes, sir.

Q. Do you know the time it takes for freight to come from Eau Claire to Cusick?

A. I could not swear to that; I would not be capable of giving information in regard to that.

Q. Now, Mr. Bond, do you know the amount of logs that remained there at the mill after the season of 1911?

A. Yes, sir; by an estimate.

Q. How much?

A. Between fifteen hundred and twenty hundred thousand.

Q. Now, Mr. Bond, in the complaint here reference is made to the fact that this machinery was furnished in incomplete portions, and by reason of that there was a loss of labor in installing that. Explain to the jury what there was about that, and the condition, and the machinery that came in that condition?

A. I didn't get the meaning of the question.

Q. I want it explained how the loss would occur, and what the machinery was that that situation arose over?

A. From memory I couldn't tell all of it.

Q. Have you some data by which you can refresh your recollection?

A. Yes, I have some.

Q. Will you produce it and refresh your recollection if you care to?

A. I have some. I have the invoice here. It will take quite a while.

(Testimony of J. R. Bond.)

Q. Don't take the invoice unless it is necessary, take the data that you have.

A. For instance, one line shaft, the line shaft and felts were delivered in one car. The drops were all ready and everything was ready to put that shaft in and the boxes didn't come. The shaft came in one car and the boxes came in another. Now, by taking that machinery off the car and putting it right up at the time, handling it only once, it would cost only twenty-five or thirty per cent, but the boxes were not with it and we had to drop them on the ground, take our stuff all out of the way and store that machinery until the other car got there. That was only one.

Q. These counter shafts that you refer to, were they received before or after March 15th?

A. Why, part of them before and part of them after.

Q. Well, this portion that you are referring to, where you experienced difficulty?

A. This line shaft, that was received before March 15th.

Q. Now, confine yourself in your explanation of this to machinery that was received after March 15th, and the time for freight to come from Eau Claire after March 15th; confine yourself to that, Mr. Bond.

A. That would be very hard to do without showing it on the invoice.

Q. Can you tell by the data that you have there?

A. I haven't the data of May 24th carried down here. On March 30th—that is also all the dates of leaving Eau Claire.

(Testimony of J. R. Bond.)

Q. Now, Mr. Bond, about these boxes that were not planed, will you explain to the jury which of the boxes that are mentioned in the specifications there, to be planed, were not planed?

A. Well, part of the line shaft boxes and plate for the edger gear, the edger drive, and the log jammer, conveyor boxes, I believe that the slasher boxes come under that head. I would not be sure. I do not know whether they were planed or not.

Q. Well, were they furnished planed or weren't they?

A. No, no.

Q. Do you remember any of the others?

A. The plate on the edger; that is, the back of the box, angle plate, and all of the line shaft boxes were of different thicknesses from the back to the shaft, you understand, not the same thickness.

Q. What effect, if any, did this have upon the value of these boxes?

A. Well, it cost considerable to install them.

Q. And what was the difference in value, would you say?

A. Well, it was at least fifty per cent of the setting.

Q. Well, can you fix that in dollars?

A. I think that would be a——

Q. Do you know the value of that class of material?

A. Yes, sir—I don't know of the value—of the cost of the mill, understand, but I do of the work that was done in the setting of it.

Q. You know the cost of the work?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. The extra work that had to be put onto it?

A. Yes, sir.

Q. Do you know what the market value was of those boxes?

A. No, sir.

Q. Can you give an idea of about the number of those boxes?

A. This is an estimate—I think twelve on the line shaft—

Q. I mean altogether, everything?

A. Well, no. There wasn't any boxes with the two plates of an even thickness. It would be too great a number for me to estimate.

Q. Was there any of the iron necessary to be used in connection with the conveyor and transfer system of the mill or for the log slip, log deck, and sorting table, was there any of that that was not furnished?

A. Yes, sir.

Q. State what was not furnished.

A. None of the sheet steel covering the log deck or for the slasher, lumber transfer, and none of the steel for any of the conveyors, nor for covering the log slip. In fact, there wasn't any steel for covering any conveyors furnished that I know of. There was some sent up there, a small amount, but I think it was sent by the M. A. Phelps Lumber Company, but it was not nearly enough. They are not covered now.

Q. You say sent for the Phelps Lumber Company?

A. I can't say as to that.

(Testimony of J. R. Bond.)

Q. Do you know of any that was furnished by the McDonough Manufacturing Company?

A. I don't know of any.

Q. Have you made any computation as to what the value of that would be, to put it in the mill?

A. No, I would not be competent to tell the value of that steel.

Q. Have you made any computation as to the amount of it?

A. Why, I believe there is an order here on file, that I made out, I think something like eight hundred square feet; something like that.

Q. Can you find that, Mr. Bond?

A. You have it before the Court.

Q. It is in one of these letters?

A. Yes, sir. No, that would not be enough to cover those.

Q. You say that would not be enough?

A. No. You can figure up these specifications. I wish to amend that answer. Eight hundred square feet would not cover the log slip and the deck and the slasher and the transfers.

Q. Are you referring to something that is in a letter?

A. Yes. It would take four hundred feet alone, or better, for the slip alone.

Q. Mr. Bond, look at Defendant's Exhibit 60, and state if that is the information that you compiled?

A. That don't cover the log slip.

Q. Will you point out in this letter of March 16th, Defendant's Exhibit 60, the ones that relate to that con-

(Testimony of J. R. Bond.)

veyor and other things that I just asked the question about, just for the record? Read it all if necessary.

A. The log slip would take four hundred square feet and the deck would take four hundred more.

Q. Just read the letter so as to refresh your recollection and just give us the figures of the iron that is necessary; and if that does not correctly state it, give us any additional that should go into it. Just take your time now and give us the figures.

A. It would take 2,410 square feet.

Q. The iron that was not furnished?

A. The sheet steel, yes.

Q. 2,410 square feet?

A. Yes.

Q. Now, that 2,410 square feet that you have given, does that cover all of that iron that you say was not furnished in connection with the conveyor and transfer system, and iron for the log slip, log deck and sorting tables?

A. No, it doesn't cover it all.

Q. What is there now that should be added to the 2,410 square feet?

A. I could not compile that information without time.

Q. Just keep that in mind, if you will, and I will give you a little time.

A. I have the dope, but I haven't got it completed.

Q. This 2,410 square feet of iron, that is sheet iron, is it?

A. Yes.

Q. And what would be the thickness of it?

A. It would run from one-eighth to one-sixteenth.

(Testimony of J. R. Bond.)

Q. Do you know the value of that?

A. No, sir; I do not.

Q. Now, the centering mandrel for the filing room. Do the specifications you have refer to that?

A. I don't think it is mentioned in the specifications except in a general way.

Q. Can you turn to the page of these specifications where the filing room is referred to?

A. Yes, sir.

Q. Now, referring to the page next to the last page of these specifications, this language: "It is the intention of these specifications to include all of the furnishings, and any member of the machinery to complete the mill found lacking will be furnished free of charge."

A. Yes, sir.

Q. State whether this centering mandrel was necessary in order to complete that portion of the mill?

A. Yes, sir.

Q. And was it furnished?

A. No, sir.

Q. State what the centering mandrel is?

A. Properly speaking, that should be called the centering device.

Q. Will you explain to the jury the purpose of it?

A. It is a tapering, conical bolt, cone shaped, to fit any sized saw opening, in any way.

Q. Do you know what the value of that was?

A. No, I do not.

Q. You do not know the value?

A. No. It shows on the invoice, I guess.

(Testimony of J. R. Bond.)

Q. Have you the invoice here showing it?

A. I have not.

Q. Now, these steam pipes, Mr. Bond, that were furnished by you here in Spokane, that the McDonough Manufacturing Company never sent, what, if anything, did the Phelps Lumber Company have to do with the material they furnished in the way of cutting it and threading it?

A. It had to be cut and threaded on the ground.

Q. Who performed the work of cutting and threading the pipe for the mill?

A. The Phelps Lumber Company.

Q. Did you keep any account of the amount of expense incurred in doing that?

A. There was an account sent into the office; I haven't it.

Q. Do you know how much it was, the expense?

A. All large pipe is threaded and cut the right length for installation; all small pipes are cut at the mill.

Q. Could you have gotten them cut and threaded at the stores in Spokane or wherever you bought them at the same price you were able to get them in the condition you did get them?

A. Why, we could have got them that way, but we could do it cheaper at the mill, and so we did it at the mill.

Q. What size of pipe do you refer to as small pipe?

A. Why, generally all under four inches.

Q. All under four inches?

A. Yes, sir.

Q. You cut them at the mill?



(Testimony of J. R. Bond.)

A. Yes.

Q. Now, what expense, if any, did the Phelps Lumber Company incur in cutting and threading these large pipes over four inches?

A. I can't give that information without seeing the books.

Q. What books would you like?

A. It would come off of the time books at the general office.

Q. Have you ever made an estimate of that?

A. Yes, sir.

Q. Where is that estimate you have prepared previously?

A. Why, I think a copy of it is here in Court somewhere. I haven't the estimate with me.

Q. Have you a copy, Mr. Bond, of the plans that were prepared or furnished you?

A. No, I have not.

Q. Where are they?

A. They are over to the main office.

Q. In this city?

A. Yes, sir.

#### CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Mr. Bond, as I understand it, the line shaft is the main shaft in the mill, which travels from one end to the other, and to which most all of the machines are belted, is that correct?

A. Yes, sir.

Q. It is the main shaft?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. Now, is that shaft the same thickness the entire distance?

A. No, sir.

Q. It is not?

A. No, sir.

Q. Describe that to the jury?

A. There is—well, there is, for instance, it is one size at the drive wheel where it is received, where the main belt is received on the line shaft, then it tapers each way until it gets to the end, and being smaller at the outer end.

Q. That is, where the main belt comes over from the engine and goes around the shaft it is thicker?

A. Yes, sir.

Q. And it gets more narrow as it goes toward the end of it?

A. Yes, sir.

Q. As I understand it, those boxes that you have spoken of are the sockets in which the shaft turns, are they not?

A. Yes, sir.

Q. Well, do you know how to determine, in a mechanical way, the distance between the center of the shaft—take, for instance, this roll here, and we will say this would be the center of the main shaft—now, do you know how to determine the distance from the center of that shaft to the sill?

A. Yes, sir.

Q. You do?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. All right; you may tell the jury?

A. Well, you take a transit and put that line, absolute line, right straight through the mill, the line of the line shaft, take a rule and let it strike the figures on the rule, then if the shaft is three and a half, take half the diameter and measure back from that line, gives you it absolutely.

Q. Well, now, you don't quite understand the question. We will assume that this here is a shaft four inches in thickness. Now, can you tell me what the rule of mechanical construction is which indicates the distance between this point in the center of the shaft and the point in which the sill should be laid?

A. You mean the radius of the circle plus the backing up above or "Pi" times the diameter there; which do you mean?

Q. I mean the distance which is established by manufacturers and mechanics, concerning what should be the distance from the center of the shaft to the backing of it, up to where the back should fit down on the sill.

A. What backing?

Q. What is it?

A. What backing?

Q. As I understand it, the support that goes under this shaft and fastened onto the sill is called the backing?

A. Yes, sir.

Q. Now, it is this backing which you claimed was not of uniform thickness?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. And with which you experienced difficulty because some sills were too near the shaft and others were too far away?

A. Yes, sir; it was either one of two things.

Q. Your box was too big or the shaft or sill had been built too close to the shaft?

A. Yes, sir.

Q. It could have come about in either way, would it not?

A. With your permission, I will explain to the jury—

Q. I should just like to know if you can answer that first as to whether you know the law of mechanics which determines the distances from the center point in the shaft to the edge of the box?

A. Yes, sir; I have already told the jury.

Q. You have?

A. Yes, sir.

Q. Now, Mr. Bond, the log slip, I believe, is the sheet iron slide upon which the logs are pulled out of the water into the mill, is it not?

A. Yes, sir.

Q. Is it a sort of trough?

A. Yes, sir.

Q. And in the bottom of that trough is a chain?

A. Yes, sir.

Q. And is there a passageway under the chain?

A. Yes, sir.

Q. Have you seen mills in which there was no iron under the chain?

A. No, not under the chain, under the chairs.

(Testimony of J. R. Bond.)

Q. Explain to the jury about chairs—what the chairs are?

A. They are commonly known as dogs; they go on a chain. They set like that and something like this way; the log lies on the chair so it rests right on this chair and the iron rests under this bottom for the conveyor to carry up. Without it it couldn't come up.

Q. There is no iron on which the chain rests?

A. No.

Q. Other than these chairs?

A. No, not any.

Q. And you have never seen mills without this iron on the chairs, have you?

A. No, I never have.

Q. What other iron is there about this log slip?

A. Why, there is the slideway, slip, that turns out like this; this is generally covered with one-eighth inch steel.

Q. Generally covered with one-eighth inch steel?

A. Yes, sir.

Q. Have you seen mills without it?

A. I don't think that I have. I may have.

Q. Have you seen any mills with it on the sides?

A. Yes, sir.

Q. Where?

A. The Ione mill, for instance. I would not swear the mill itself is covered with that steel, but their slip out over the dump is covered and I would naturally suppose their log slip would be.

(Testimony of J. R. Bond.)

Q. Then you think the mill at Ione is the only one you have seen with iron on it?

A. No, I have seen twenty others.

Q. You can name twenty others?

A. Yes, sir.

Q. And how many can you name in which you have not seen it?

A. The little mill that we ran at Creston did not have steel on the slip before this fall. That was a little bit of a mill, twenty-five thousand capacity. And I couldn't name any others positively.

Q. Do you know whether it is on the McGoldrick Lumber Company at Spokane?

A. No.

Q. Do you know whether it is on the Dalkena Lumber company mill?

A. No.

Q. Do you know whether it is on the Fidelity Lumber Company mill?

A. No.

Q. Never noticed that?

A. Never been at the Fidelity Lumber Company mill.

Q. Have you ever seen a log deck ironed with sheet iron?

A. Yes, sir.

Q. Where did you see that?

A. In several places.

Q. Where?

A. Muskegon, Michigan.

Q. Did you ever see it in this country?

(Testimony of J. R. Bond.)

A. Well, I can't say I have; never took any notice; I haven't been in but a very few mills.

Q. Have you never seen it in this country?

A. I can't say whether I have or not.

Q. Why do you say it is necessary, then, if you don't know?

A. Because, you see, it is needed there and is referred to in the specifications.

Q. Where do you find it in the specifications; that is, the portion Mr. Williams read concerning the necessary iron, is it?

A. Yes, it says: "All iron for log slip, log deck and sorting table."

Q. "All iron" or "All necessary iron"?

A. All iron.

Q. Well, should the sills under the log deck then be iron?

A. No, sir.

Q. Well, how can you conclude what all iron for the log deck would be unless that which people have been accustomed to use?

A. What is necessary for economical use of the log deck.

Q. Wouldn't it be more economical to make the sills of the log deck of iron, too?

A. No, sir.

Q. Why not?

A. Because it is not necessary.

Q. Well, what is the test of that? Wouldn't iron last longer?

(Testimony of J. R. Bond.)

A. One of the main tests is cleaning bark from the deck.

Q. But you can't remember of ever having seen a log deck ironed at all, can you?

A. Yes, sir.

Q. Oh, you can. Where was that

A. In Muskegon.

The COURT: We went all over that once.

Mr. McCARTHY: Q. Well, now, about the transfers. You can say that there was some things missing, was not furnished for the transfers?

A. Yes, sir.

Q. As I understand, one of the transfers is the place where the lumber falls off after it leaves the edger as it slides over onto the device which cuts the ends of the lumber off?

A. Yes, sir.

Q. You say there was iron missing for that?

A. Yes, sir.

Q. What iron is necessary, outside of the chains that travel along there?

A. Where the lumber drops onto the table there, if it is not ironed it will break the table in every thirty days.

Q. Where the lumber drops off?

A. Yes, sir.

Q. Then, other than that, is it required under the chains?

A. Under the chains?

Q. Yes.



(Testimony of J. R. Bond.)

A. Why, there is a track for the Campbell back chain to ride on, or one and a half.

Q. When the lumber comes along from the edger, being cut in proper widths, then it slides over onto this transfer table, which slides it over to the trimmer, which cuts it into proper lengths?

A. Yes, sir.

Q. Then, you say, the way that comes over, as the board falls down off the edger or transfer, that is always customarily ironed, is it?

A. Yes, sir; I don't know whether it is customary, but it is necessary.

Q. Now, from the place that it drops there, to get transferred over to the trimmer, how about it being clear over to the trimmer, do you say?

A. It is a great deal more economical to operate mills if these are covered with iron.

Q. It is a great deal more economical to operate the mill?

A. Yes, sir.

Q. Have you ever seen one covered with, or cased with steel?

A. Yes, sir.

Q. Other than where the boards drop off?

A. Yes, sir.

Q. Where is that?

A. In Muskegon, Michigan. I put the iron on myself.

Q. Have you ever seen any other one?

(Testimony of J. R. Bond.)

A. I could not recall. I don't know now. I wouldn't notice that.

Q. What is the nature of this business you have been in twenty years, I think?

A. I said something about manufacturing. I have been operating mills for myself and other people and in the manufacture of lumber in some form.

Q. How many mills have you built, if any?

A. Well, let's see—I can't say that I have ever built any completely.

Q. The first work, in construction work, that work at Cusick, was under your supervision, you say?

A. No, sir.

Q. Under whose?

A. I can't mention his name. Kirkland, I think.

Q. Who was he?

A. He was a millwright.

Q. How long did he work there?

A. He worked there—this is from memory, understand, I should judge—well, maybe sixty days.

Q. Sixty days commencing—was that before Mr. Kelly came on after?

A. Yes, he was in charge of the work.

Q. He was in charge sixty days before Mr. Kelly came?

A. No. He stayed in charge until Mr. Kelly came and then took charge of part of the frame while Mr. Kelly was there.

Q. What I am trying to get at is, when, if at all, you had charge of the construction of the mill?

(Testimony of J. R. Bond.)

A. Why, after Mr. Kelly laid off.

Q. After Mr. Kelly laid off you were put in charge?

A. Yes, sir.

Q. Who examined the first plans which were submitted to you about the first week in October, to determine whether they were sufficient, or a mill could be built from them?

A. Mr. Phelps and myself.

Q. And who as the constructing millwright?

A. Mr. Phelps is a practical operator.

Q. But you are the only person to whom he referred for certain information as to the plans, scientific accuracy of them?

A. I cannot swear to that, as I was not with Mr. Phelps all the time.

Q. When did you receive the first plans approximately?

A. I can't give that date.

Q. State it as nearly as you can?

A. It would be very indifferent testimony. At that time I was looking over a great many things there and I couldn't give it very nearly at all. It might have been some time after the 1st of October, I should judge.

Q. And why did you advise rejecting them?

A. For various reasons. On account of their incompleteness and other advice that I received.

The COURT: I understand there will be further examination of this witness when the plans are produced.

Mr. Williams: Yes, there probably will.

(Testimony of J. R. Bond.)

The COURT: The only reason I suggest it was that the examination be dropped on that question.

Mr. McCARTHY: We will without further questions along that line.

Q. Mr. Bond, are you familiar with the season at which the Fidelity Lumber Company commenced to operate their mill last year—the month?

A. No, I am not.

Q. Do you know when the Dalkena commenced to operate their mill?

A. No; I do not.

Q. Do you know at what time the Fidelity Lumber Company commenced sawing during the fall of 1910?

A. No, I can't recollect it. I might have known at one time.

Q. You would not say that it is not a fact they were not sawing in December?

A. No, I would not say that it is not.

Q. With reference to these logs that you spoke of being driven to the mill, isn't it a fact that you were unable to get them out until July 24th, on account of the order of the Dyking Commissioner?

A. I don't know that it is.

Q. Well, but you know there were some impediments to getting them out, don't you?

A. I heard the engineer on the dyke say that we could get them through; that is all that I know, why we couldn't get them through; no reason to believe that we couldn't have got them through if we wanted to.

Q. Do you remember a conference between yourself,

(Testimony of J. R. Bond.)

Mr. Bond, and Mr. Hubbard, at which the matter of sawing was discussed, at which you were present?

A. Do I remember what? Please repeat the question.

Q. Any conference at which yourself and Mr. Hubbard and Mr. Phelps were present, at which the fact that the Phelps Lumber Company intended to saw the logs was spoken of, other than the one you have mentioned?

A. No, I don't remember.

Q. That was just one conversation?

A. One, yes.

Q. Where was that at?

A. It was in a building . We were up in the mill office at Cusick, Washington.

Q. When?

A. It was sometime I should think in the latter part of September or the first part of October, I would not give the definite date of it?

Q. What time of day was it?

A. Well, it was from seven o'clock in the evening until to I think somewhere about twelve or one o'clock at night.

Q. You didn't talk about that at the time he went over his general ideas?

A. His general plan of the mill, I think.

Q. Well, what had that to do with the sawing, commencing that season?

A. Why, it was the very thing, the conditions of it relative to the time of starting the mill, I believe.

Q. You could not say for certain when that was re-

(Testimony of J. R. Bond.)

ferred to in the contract, how that matter should come up?

A. How is that?

Q. Do you or do you not know that was referred to in the written contract at the time?

A. I don't know whether it was or whether it was not, no.

Q. Now, you can't say then other than that it was some time between seven o'clock in the evening and one o'clock that night?

A. No, or from seven or eight o'clock in the evening. I made no note of it in that regard.

Q. Now, just repeat the conversation as you recall it?

A. I can't repeat the conversation; it has been two years.

Q. You don't remember much about it?

A. I remember quite definitely about it, quite a few things about it.

Q. What do you remember about it?

A. I remember what I have already told in regard to it.

Q. Just tell it again.

A. The proposition of buying logs was discussed, the sawing season, the length of sawing season, and the conditions that existed in that country years past and so on, and a general discussion along that line.

Q. Who else was making the statement as to what the season was?

A. Mr. Phelps and myself.

Q. Both of you made the statement?

(Testimony of J. R. Bond.)

A. I don't remember.

Q. Now, then, what did Mr. Hubbard say, if anything?

A. I can't recall the conversation.

Q. Did Mr. Hubbard say anything?

A. Yes, he certainly said something.

Q. What did he say about that?

A. I can't give the conversation.

Q. What is the substance of what he said when you told him about buying logs?

A. I can't give that conversation.

Q. Well, he didn't say anything then, did he?

A. Yes, he probably did.

Q. Well, then did he or didn't he?

A. I can't say directly.

Q. Now, you stated that this band wheel had run something like two weeks before the apparatus struck against it and broke it?

A. I didn't state.

Q. Well, what did you state as to that?

A. I didn't state any time.

Q. Well, you haven't any recollection.

A. I said—I didn't say any time that it had run?

Q. Well, how long did it run then, I ask you?

A. I can't tell you; it was very short time.

Q. It might have been weeks?

A. It might have been two weeks.

Q. Mr. Bond, have you ever in your something like twenty years experience, seen a band wheel running with loose spokes and untrue before that one?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. You have seen them running with loose spokes and untrue.

A. Yes, sir.

Q. What is the velocity of a band wheel?

A. Well, I think that one up there was eight thousand feet per minute.

Q. What is it?

A. Eight thousand feet per minute, as we were running it, eight thousand feet per minute.

Q. Well, but what is the velocity at which the band wheel travels?

A. Well, we were running ours eight thousand feet up there.

Q. Is that eight thousand revolutions?

A. We were running it eight thousand at that time.

Q. How many revolutions per minute is that?

A. I can't say.

THE COURT: How large a band wheel?

A. It was eight feet.

MR. McCARTHY: Q. Eight feet in diameter, about?

A. Yes, sir.

Q. And you were running that at what speed?

A. Eight thousand feet.

Q. Did you ever see a band wheel prior to that one, running with loose spokes and untrue at that velocity per minute, and run intact?

A. Yes, sir.

Q. You did?



(Testimony of J. R. Bond.)

A. Yes, sir.

Q. Where was that?

A. Well, I have seen one at Spirit Lake, Idaho, and the Diamond mill that was taken out two years ago, I think running nine thousand feet.

Q. And was it running for some time in that condition, some weeks, or months?

A. I think perhaps it had run three or four weeks, gradually getting worse.

Q. Did you have any instructions from Mr. Phelps with reference to running that band wheel in that condition

A. No, I don't think that I had.

Q. You were the millwright there, and as a millwright didn't you appreciate the fact that such a wheel is liable to break and cause injury to property and life?

A. I was not the millwright at the mill.

Q. Were you there in charge?

A. I was there, yes, sir, in charge.

Q. What, if any, steps did you take towards the correction of that wheel during two weeks?

A. We put up a rest and tested it under load occasionally to see if it was getting dangerous, and when we thought it had, we quit.

Q. Is that not good mill policy to test a band wheel occasionally under load?

A. Yes, sir.

Q. And that was just the ordinary test you gave it?

A. Yes, sir.

Q. After Mr. Kelly then was discharged there was a

(Testimony of J. R. Bond.)

suspension for some weeks on the building of the mill, was there not?

A. No, sir.

Q. There was not?

A. No, sir.

Q. You continued then to build from that time on?

A. I was in charge of the construction work, with Mr. Courtland as millwright.

Q. What experience did Mr. Courtland have, as millwright, to your knowledge, if any?

A. I believe he built the Jenkins mill.

Q. Were you there?

A. No, I wasn't there?

Q. Well, now, how do you know that he built it?

A. By a letter he sent me.

Q. Do you know of any other experience he had?

A. A band mill at Penrith, if I remember right. These were letters, you understand.

Q. What class of mills were they?

A. Well, the Jenkins mill was about a forty-five thousand, single cut, band; very good mill, I believe.

Q. And was he superintendent or constructing millwright during its entire erection?

A. So the letters said, I believe, I can't remember.

Q. Did you have the selection yourself of Mr. Courtland as millwright?

A. No, sir.

Q. Who selected him?

A. With Mr. Phelps' permission, I selected him.

Q. Will you examine this letter addressed to you un-

(Testimony of J. R. Bond.)

der date of February 21, and state whether or not you remember having received such a letter?

A. I can't say that I have received that or have not. I could send up to the mill and get a copy of it if I did receive it. If I got it, it is there in the files.

MR. McCARTHY: I will also at this time offer for identification four other letters purporting to be written by Mr. John R. Bond, on behalf of the M. A. Phelps Lumber Company.

The four letters referred to, together with the letter previously referred to, marked PLAINTIFF'S EXHIBITS 71 to 76, inclusive, for identification.

Q. You may examine the signature on this letter and state whether that is yours?

A. Yes, sir.

Q. And this letter dated February 14th, 1911?

A. Yes, sir.

Q. And this letter dated February 13th, 1911?

A. That is my writing all right. I will identify that.

Q. And this letter dated February 19th, 1911?

A. Yes, sir.

Q. And this letter dated March 26th, 1911?

A. Yes, sir. I can prove that other one for you if you wish it; I can 'phone up to the mill and get the original.

Q. You cannot remember having received a letter of that nature, though?

A. No, I cannot.

The letters identified by the witness were admitted in evidence without objection and marked PLAINTIFF'S

(Testimony of J. R. Bond.)

EXHIBITS 72, 73, 74, 75 and 76, and read into the record.

Q. Now, why did you suggest these chains, Mr. Bond?

A. Why, it would be more convenient for us to put that into this conveyer than it would be to put that out of the window into the other conveyer.

Q. That is, you bring that back to the hog conveyer; is that the idea?

A. No; we reversed the chains.

Q. You reversed the chains?

A. Yes. That didn't take anything only a cross belt, reversed the chain and drove it the other way.

Q. Why was it more convenient for you to do that?

A. We had no way of taking care of the edgings without throwing them out of the window, without that conveyer was in there, so I suggested a conveyer to them.

Q. Well, according to the plans as first submitted to you, Mr. Bond, is it not a fact that this conveyer which ran over—collected the edgings in the lath mill and would dump them into the hog?

A. I believe so.

Q. And this hog is sort of a grinding machine which grinds the slabs and big boards that come off of the lath machine, grinds them up into small shavings or chops them up at least?

A. Grinds the small edgings up all right.

Q. And then from that it was originally designed

(Testimony of J. R. Bond.)

that they should drop into the conveyer and be carried off in the sawdust into the boiler?

A. Yes, sir.

Q. That is to say, going in large lumps and pieces that couldn't travel into the boiler, that would clog that conveyer?

A. Yes, sir.

Q. When the hog was taken out, so that that grinding machine was not there, you could not continue to have that conveyer carrying these big pieces over and dropping them into your feed conveyer that was conveying the sawdust over; that would not be practicable?

A. No, it would not.

Q. I will proceed along another line.

Now, then, you say it became necessary to prevent these large pieces from falling into that conveyer to the boiler, so what provision was made with reference to throwing them out of the window that you spoke of?

A. It does not become necessary there. If the court will allow me to explain.

Q. All right, go ahead and explain.

A. We can dump these slabs by an automatic dump into the burner conveyer from that conveyer and carry them out to the furnace conveyer and still take our sawdust on through. We suggest as a better way to do that, than the conveyer.

Q. That would not have been necessary if that machine called the hog had been left there, would it?

A. Well—

Q. Would it or would it not?

(Testimony of J. R. Bond.)

A. I can't answer the question. It is not intelligible.

Q. I will ask it more definitely: when the hog was in there, the large pieces coming from the lath mill would be ground up and fall into the boiler conveyer and from there be carried on with the sawdust, would it not?

A. All that it could take care of; yes, sir.

Q. When the hog was taken out of there, and this conveyer from the lath mill continued dropping these large pieces in there, would that have been practicable for that to have continued in that condition? Now, would it or would it not?

A. I can't answer that question without an explanation.

Q. All right then.

MR. WILLIAMS: You have a right to explain your answer. Answer yes or no, and you have a right to explain, Mr. Bond.

MR. McCARTHY: I have no objection.

A. We could put an automatic dump, putting these edgings into the boiler conveyer it would not be necessary to put in the other one and we could handle our sawdust just the same, just exactly, but a suggestion then that the conveyer would be handier, it would be handier, we omitted it.

Q. But some changes would be necessary, would it not?

A. Yes.

Q. Either in putting in this—what do you call it?

A. A dump.

Q. Automatic dump or by reversing the conveyer?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. And by reversing the direction, you mean making it carry the stuff, instead of carrying it on through the lath mill, in the direction in which it was originally planned, it would carry it off in the opposite direction?

A. Yes, sir.

Q. What would become of it when it got over there?

A. We suggested we put in the other conveyer.

Q. That is, another conveyer from this conveyer through the lath mill over to the boiler conveyer?

A. Yes, sir.

Q. So that necessitated the addition of the extra conveyer?

A. I can't answer that question.

Q. You may now read, if you will, this letter the signature to which you have acknowledged, being Plaintiff's Exhibit 72?

A. "The cutoff-saw for our mill should be right-hand."

Q. What date, approximately, did you write that letter?

A. I can't say. I can give you the information by getting your letter inquiring for that information from Cusick.

Q. You may now read this letter of yours, Mr. Bond, dated February 14th.

A. "Gentlemen: In regard to steam openings from boilers. You have a plan Mr. Phelps sent you of the engine room but I send this rough drawing to show position of engine and boilers. Now in regard to size and

(Testimony of J. R. Bond.)

location of pipe to mill, we have no information in regard to size of pipe to shot gun nigger or loader and kicker cylinders, so use your own judgment in regard to this pipe. The opening marked planing mill engine and fire pump should be at least seven inches, as other purposes will arise where steam can be used taken from the same line. Now, I think the pipe to engine should be as near direct as possible and the one opening into mill should face directly toward the mill and the one to be used for fire pump and planing mill engine directly opposite the one for shot gun and cylinders."

Q. You may also read this letter of yours dated February 19, 1911, which has been marked Plaintiff's Exhibit 75.

A. "Gentlemen: I am sending you blue print of our engine and boiler room with steam pipe rough drawn on same. This will give you a better idea of the piping."

Q. Referring to the back of your letter of February 14th, 1911, you may just now read that signature and address to the letter?

A. "Yours respectfully, Phelps Lumber Company, by J. R. Bond."

Q. And what else do you see on there?

A. M. E.

Q. What does M. E. mean there?

A. Mechanical Engineer.

Q. Mr. Bond, I believe the boiler has a chest or drum which is commonly called the steam drum, is it not?

A. I believe so.

Q. And from that or in that the steam is generated



(Testimony of J. R. Bond.)

which is afterwards distributed around through different openings, is it not?

A. It is generated in the boilers and collected there.

Q. Compressed and generated in the boilers and goes up into this steam chest and then it is distributed through pipes from that to different places?

A. Yes, sir.

Q. One of these pipes led from this steam chest or drum over into the engine, the main engine, the engine proper, does it not

A. Yes, sir.

Q. In all mills?

A. Yes.

Q. And what other openings are in that by which steam is carried out from that steam chest?

A. There is a pump opening.

Q. The pump for fire protection?

A. The pump for water protection, at least for furnishing water to the boiler and there is a steam opening to go to the mill and one for the whistle and one for the planing mill, I believe is all, except a drain pipe opening.

Q. Now, is it desirable to have these pipes which lead out from this steam chest in different directions lead out as nearly direct as possible in order to make the saving of steam as great as possible?

A. It is conceded so.

Q. It is, you say?

A. I believe it is considered so.

Q. The size of these openings depend on the power and size of the mill that is to be run by them?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. And if you had a planing mill right adjoining your mill and desired a certain amount of power, there would be there a smaller opening for steam than if you had the planer two or three blocks away?

A. Yes, sir.

Q. That would be proper

A. Yes, sir.

Q. And if you had the planer on the south side of the mill you would have the opening come out to that planer from the steam drum in a different direction than if you had it on the north side, would you not?

A. Yes, sir.

Q. That would be economical and proper?

A. Yes, sir.

Q. The main shaft or line shaft I believe you have described, have you not?

A. Yes, sir.

Q. What would you consider the principal shaft or counter shaft in the mill, if there was one?

A. Why, I should probably call it the edger.

Q. Edger?

A. Yes, sir.

Q. That would be the principal counter, would it?

A. I would not be competent to say. The lath mill counter, while it is longer and bigger it does not require the power to run it that it does the edger counter.

Q. Yes, I know, but isn't there some well known distinction as to sawmills?

A. Not that I am familiar with.

(Testimony of J. R. Bond.)

Q. You don't know whether there are certain sized counters which are known as principal counters?

A. I would not be authority on that, I am not a millwright.

Q. First of all, the power is transferred in the saw-mill to this long, big, main shaft?

A. Yes, sir.

Q. Then from that there is a belt goes over to the edger?

A. Yes, sir.

Q. To another small shaft which is called a counter, and where ever these small shafts are they run from a belt from the main shaft, these are called counters?

A. Yes, sir.

Q. If this machinery had all been delivered to you, you say, according to the contract and had arrived at the time specified, it would have required how long did you say, to set it up?

A. From perhaps thirty-five days to—thirty to thirty-five.

Q. Well, when do you say—from the date—about the date of the arrival of the last of this machinery?

A. I didn't say.

Q. Do you know?

A. No.

Q. Do you know approximately?

THE COURT: Counsel stated some time in May. I don't know whether that is correct.

MR. WILLIAMS: May 24th, if you care to refresh your recollection.

(Testimony of J. R. Bond.)

Q. What was the occasion, assuming that this machinery arrived about May 21st or 24th, for failure to start the mill sooner than July 16th?

A. Well, there were several reasons. The piping was not on the ground. That was to be furnished. The constructors was not there of the boilers, and various things occurred.

Q. Well, did you spend any time waiting for the boiler constructors or any of the men there?

A. Now, this is approximate. I think twelve days—ten or twelve days. This may not be right, gentlemen; ten or twelve days, I think.

#### REDIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. Mr. Bond, what was the necessity for this conveyer iron or iron in connection with the conveyers that you referred to?

A. To prevent the sawdust and slabs from catching on the conveyer in the conveyor. Catches slivers in the planking and the conveyor will leak without iron on it; you cant' hold it.

Q. These conveyers—I am not sure whether the jury understands—are they a kind of a way by which slabs and pieces of timber are carried away?

A. Yes, sir.

Q. What is it carries these pieces of timber along?

A. Chains.

Q. Where is it that this conveyerway is ironed as you have referred to?

(Testimony of J. R. Bond.)

A. Down the sides a short distance and across the bottom.

Q. As these slabs and things go along down they gather or come in contact with these sides of the conveyer chute?

A. Yes, sir.

Q. And is that the place where you say it catches and makes slivers and all of that?

A. Yes, sir.

Q. Without this iron being put on, the iron as mentioned, what is the situation with reference to the conveyers lasting or not; that is, does it have any life?

A. Not nearly as long as it does with iron on it.

Q. Does it have any more than a year's life?

A. The sides about two years.

Q. These boiler erectors or constructors that you referred to, did you say they reached there after the boiler?

A. Yes, some days later. I can't tell you the exact date.

Q. Did you ever at any time give any order, Mr. Bond, for the changing of this conveyer from the lath mill?

A. This conveyer referred to here?

Q. Yes.

A. No, I suggested it.

Q. Simply what is contained in this letter?

A. Yes, sir.

Q. When you speak of throwing the edgings without something of that sort, you would have to throw the

(Testimony of J. R. Bond.)

edgings out of the window, what did you mean; by hand or how?

A. By hand.

Q. That is, as they would accumulate on the floor you would carry them to the window and throw them out?

A. Yes, sir.

Q. Without something of that kind?

A. Yes.

J. R. BOND, recalled for further examination, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. Have you, since last evening, figured the amount of iron in these conveyers?

A. Yes, sir.

Q. State what the amount is, Mr. Bond?

A. It will be 600 square feet of  $\frac{1}{8}$  sheet steel; 1280 feet of 1-16; 200 lineal feet of  $\frac{3}{4}$ x2 inch iron; 1072 feet  $\frac{1}{4}$ x1 $\frac{1}{4}$ .

Q. Explain to the jury where that different iron would go?

A. The 16 sheets of  $\frac{1}{8}$  sheet steel would be covering the log slip; 280 feet of 1-16 would be slasher conveyer, 450 feet would be the deck of the mill, 150 feet would be the covering to the remainder of the boiler conveyer and 1000 feet for the boiler conveyer; 200 lineal feet of  $\frac{3}{4}$ x2 would be for the slasher transfer guards; 172 feet of  $\frac{1}{4}$ x1 $\frac{1}{4}$  would be on the bottom of the conveyer called

(Testimony of John D. Chickering.)

the hog conveyer, 900 feet of  $\frac{1}{4} \times 1 \frac{1}{4}$  would be protection to the chain guards on the lumber transfer.

Q. Have you made your figures now on the cost of cutting this pipe and fitting it, over four inches

A. About one hundred and seventy-five dollars.

Q. Was this mill running nights during the summer of 1911?

A. No, sir.

Q. Was it equipped to run at night?

A. No, sir.

Q. In what respect was it lacking for running at night?

A. It might be light, and in fact the equipment and power to make the light.

Q. Could any of these damages on account of carrying logs over have been saved by running at night if you had equipment?

A. It would have cost more to have equipped for it than the damage done.

Q. Is there any greater expense in running at night than there is in the day time?

A. Yes, sir.

WITNESS TEMPORARILY EXCUSED.

JOHN D. CHICKERING, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. State your name to the jury?

A. John D. Chickering.

(Testimony of A. T. Brown.)

Q. What is your business?

A. I am employed by the Holley-Mason Hardware Company.

Q. And what business are you engaged in?

A. Wholesale hardware.

Q. Were you engaged in that business in the year 1911?

A. I was.

Q. The summer of that year?

A. I was.

Q. Are you acquainted, Mr. Chickering, with what the values were in this vicinity in 1911, in the summer of 1911, of sheet steel and lineal steel used in conveyers and transfers in mills?

A. I was familiar with the prices of those materials.

Q. State what the value would be, if you can give it in raw numbers, of 600 square feet of  $\frac{1}{8}$  sheet steel, 1280 feet of 1-16, 200 lineal feet of  $\frac{3}{4}$ x2 inch bar steel, 1072 feet of  $\frac{1}{4}$ x1 $\frac{1}{4}$  steel

A. I can state that approximately at that time as being \$343.48.

MR. WILLIAMS: You may inquire.

MR. McCARTHY: No questions.

WITNESS EXCUSED.

A. T. BROWN, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. State your name to the jury, Mr. Brown?

A. A. T. Brown.



(Testimony of A. T. Brown.)

Q. And where do you reside, Mr. Brown?

A. Spokane.

Q. And what is your business?

A. Sheet metal and boiler business.

Q. And how long have you been in the boiler business?

A. Oh, about twelve years.

Q. And what is the name of your firm?

A. Brown Brothers.

Q. In that business, do you manufacture boilers?

A. Yes, some.

Q. And how long have you been engaged in the manufacture of boilers?

A. About twelve years.

Q. Mr. Brown, I will ask you this question: What would be a reasonable time for the furnishing of an extra boiler together with the breeching that goes with the boiler, so as to change the installation of boiler from a two battery to a three battery, the boiler being seventy-two inches by eight feet?

A. Do you mean after the boiler was on the ground?

Q. No, the construction of it, so as to be ready to deliver?

A. You mean the construction of the boiler proper?

MR. WILLIAMS: Yes.

A. Well, two months ought to be a reasonable time.

CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Mr. Brown, from what time do you date these two months?

(Testimony of J. Simonds.)

A. Well, two months from the time you receive the order to the time you could complete the boiler, provided there wasn't anything else additional that I don't know anything about.

Q. What do you mean by receiving the order; from the date of the order?

A. Well, if you order a boiler from us, say sixty days after that time you ought to have it; could have it ready for you.

Q. Well, if the order contained complete specifications you mean; would the order have to contain complete specifications in order to have you make it in sixty days?

A. Would it have to contain what?

Q. Complete specifications, description?

THE COURT: Just one minute. I think the question is perfectly plain. If you don't tell what you want it is no order. It seems to me this is just consuming time.

WITNESS EXCUSED.

J. SIMONDS, a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. State your name to the jury, Mr. Simonds?

A. J. Simonds.

Q. And what is your business, Mr. Simonds?

A. Engaged in the sale of machinery.

Q. Does that include boilers?

A. It does.

Q. And how long have you been engaged in that business?

A. Well, with this present company—we were organized a year ago last March; a year and one month; but then I have been engaged in that business for about four or five years.

Q. Are you familiar with the time, a reasonable time for the purpose of constructing boilers and boiler equipments?

A. As to the promises of manufacturers of them?

Q. Well, have you had any experience in knowing what is a reasonable time for delivery, after an order?

A. Yes, considered by placing orders and the time that we get deliveries.

Q. Mr. Simonds, did you hear my general questions to Mr. Brown on the stand?

A. As to the time?

Q. As to the reasonable time for the delivery of this equipment after an order was placed?

A. Yes.

Q. What, in your opinion, would be the reasonable time?

A. Well, after we place an order with our different manufacturers, our past experience has been we have had delivery in thirty days, leaving the factory from the time the order was placed.

#### CROSS EXAMINATION.

BY MR. McCARTHY:

Q. What is one of the concerns where you have placed your order with them and got delivery of the boiler within thirty days?

(Testimony of J. Simonds.)

A. The Gem City Boiler Company, of Dayton, Ohio.

Q. What is the character of that boiler system?

A. By looking at your specifications, it was about the same as your specifications, 72 feet by 18, furnished to the Western Lead Paint Company. They delivered that boiler from the time we gave—it was 125 pounds pressure boiler—they delivered it in, I believe they—I think it was 12 days from the time the order was placed they made the shipment from their factory. We received it here in thirty-six days—I believe it got here to Spokane.

Q. Was that a boiler sold from a catalogue?

A. It was, yes.

Q. Stock boiler?

A. Something about the same specifications as you have in these specifications; just about as we have there.

Q. That was one boiler, you say?

A. Yes, that was one boiler.

Q. What is your experience with reference to the maximum time which has ever been required in your experience for the delivery of boilers from the time you placed your order?

A. Well, the longest that I have known about was a boiler for the Inland Portland Cement Company here last fall. The company promised me delivery on that boiler in three weeks, but they did not make delivery on that boiler, claiming they did not have the sheets in stock and had to order them specially from the mill. It took forty-six or forty-seven days from the time that the order was placed until they made shipment of that boiler.

(Testimony of J. Simonds.)

They promised me in three weeks. That was the most annoying delay that I've had.

Q. How much experience have you had in ordering boilers?

A. Well, I can't right off hand give you the exact number maybe of the boilers I have sold. I would judge maybe in the neighborhood of ---.

Q. That is, in here, about this city?

A. Yes, about the city. I was with the Hallidie Machinery Company for over two years—I was with them twice and of course the solicitor here don't keep exact track of the boilers, but selling boilers with other machinery. It might be more than that considerably and it might not be that much. You know the amount of boilers that go in here, a machinery house of the standing of this. We have our share of it.

Q. Well, does it ordinarily require longer for the delivery of an order in which there are two boilers joined together with breeching, and so forth, than it does a single boiler?

A. Well, I have not had occasion to order boilers of that kind. I have ordered breeching and had them made up here. I might state here that Burns made a breeching here for this Western Lead Paint boiler. They made that, went out and took the measurements and delivered it to me in about seven days. They could easily look on their books and find whether it was a little longer or shorter, but it was a very short time.

Q. Then, your experience has been rather with hav-

(Testimony of J. R. Bond.)

ing the breeching and boiler combination made at the place of delivery?

A. Well, at this particular time was the only breeching, the only breeching that I believe, in my selling, that I have had occasion to use—this one—and the square breeching, that was not coming from the factory. That is a straight stacking.

Q. Did you ever have any experience selling boilers around which was constructed special steel casing, for breechings?

A. These steel casings. No. From these specifications I never sold one of those steel casings, judging from these specifications, I never sold one of those.

WITNESS EXCUSED.

J. R. BOND, recalled for further direct examination, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. Now, referring, Mr. Bond, to the items in paragraph 14 of the Answer, taking the list attached to the complaint which you have right there in your hand, go down through that list and show what—tell the jury where the different pieces went into the mill, if they went in at all?

A. Swing shaft for the lath tightener is the shaft that the tightener swings on. The 4U bolts are all bolts that fasten the shaft to the tightener.

Q. Could the shaft be put on without these?

A. Not without these or the bolts.

(Testimony of J. R. Bond.)

Q. And were they furnished by the McDonough Manufacturing Company?

A. No, sir.

Q. Do you know what the cost of these was?

A. The swing shaft for lath tightener and 4U bolts were \$1.60.

MR. WILLIAMS: If this does not refresh your recollection at any time, say so, for I want the facts.

MR. McCARTHY: I have an idea that the way to dispose of this is to cross examine him right now, because some of these items we might wish to concede.

THE COURT: Possibly we could save time that way. It will have to be taken up some time, I suppose. I see no escape from it.

Q. One iron bale for same. Where did that go?

A. That went in the swing shaft for lath tightener.

Q. Was it furnished by the McDonough Manufacturing Company?

A. No, sir.

Q. What was the cost of the same?

A. One dollar. That is what it cost in our blacksmith shop.

Q. For bolter tighteners, 4U bolts? Where did they go?

A. For the bolter tightener. They went in the lath bolter.

Q. One iron bale. Where did that go?

A. That went in the same.

Q. One lever and connections for lath mill storage chain. What is that?

(Testimony of J. R. Bond.)

A. That chain is driven by a friction and this lever controls it so that the operator of the bolter can feed the stuff towards him.

Q. Was that furnished?

A. No, sir.

Q. 4 U bolts for tightener of the log haul?

A. No, sir.

Q. Where were they used?

A. They were used to clasp the tightener to the shaft and the shaft also to the bunks it sat on.

Q. One controlling lever for same?

A. That was to raise and lower this tightener, to control the log chain, throw it in and out of gear.

Q. Counter balance for live skids, rear skids, and also the item of front skids, where did that go?

A. That is a balance. There was skids, counter balance for the live skids. The skids are skids with chains on to transfer the lumber from the rolls to either the edger or some other parts of the mill.

THE COURT: If the witness is familiar with these items and the prices and so on, can't you cut it by one general question?

MR. WILLIAMS: Q. Mr. Bond, I will ask you this: if these items here that enter into this, whether you furnished the information to the Phelps Lumber Company whereby these were obtained and put into the mill?

A. Yes, sir; I furnished the information entirely—wait a minute. Does this continue through the pipe and everything here?



(Testimony of J. R. Bond.)

Q. Yes.

A. Yes, sir.

Q. State whether or not all of this went into the construction necessary to the completion of that mill so it would run?

A. Yes, sir.

Q. Was any of it furnished by the McDonough Manufacturing Company?

A. You would have to prove that by Mr. Phelps. Not to my knowledge.

Q. State whether or not all of these materials are materials which the specifications have described in that mill?

A. Yes, sir.

Q. Did you personally buy any of them?

A. No, sir.

Q. As to this first item, under Exhibit 2A, the one you are looking at now, do you know about these values, making the total of \$295.00?

A. These upper ones I do. They came through our own blacksmith shop at Cusick.

Q. I notice in this list here, all through, an item something like this: "Less 2%," something like that. What does that indicate in that list?

A. That is the cash discount that we received for paying our bills.

Q. You paid for these in cash as you bought them, did you?

A. Yes, sir.

Q. And got the discount?

(Testimony of J. R. Bond.)

A. Yes, sir.

Q. Do you know personally about the prices that were paid for these things?

A. Not only just those that went through our blacksmith shop.

Q. That is this first list here, is it?

A. Yes, sir.

Q. And you know of them?

A. Yes, sir.

Q. The amount is correct?

A. Yes, sir.

THE COURT: What does that first list include?

MR. WILLIAMS: That specified labor and material furnished on account of machinery, connected with the McDonough Manufacturing Company and two statements made by J. R. Bond.

#### CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Mr. Bond, taking up that first item on there, which reads: "Swing shaft for Lath Tightener, 4 U bolts, \$1.60." Now, just describe to the jury what the lath tightener is?

A. The tightener is this lath mill tightener, is the tightener in the transmission belt between the main shaft of the mill and the counter shaft of the lath mill. It is a very long belt, and put a tightener on the under side to carry it steadily and release the strain on the belt.

Q. This belt to the lath tightener is a long belt about how long?

(Testimony of J. R. Bond.)

A. Well, I should judge the belt would be about ninety feet, eighty to ninety feet.

Q. And then along in the middle of that belt there is a loose pulley?

A. Yes, sir.

Q. To keep the belt on the track?

A. To keep it from sagging.

Q. And to steady it?

A. Yes, sir.

Q. And this belt runs close to the floor or close to the ceiling?

A. Oh, it runs about—the bottom of the pulley I should judge was about four feet from the floor.

Q. And this pulley is held in its place from the ceiling or from the floor?

A. It is held in its place by a bridge. I think it is connected to the floor.

Q. You don't know about that?

A. No, I do not. I can't say from memory now.

Q. But anyway, there is a tree either coming down from the ceiling or up from the floor?

A. Either one; yes, sir.

Q. How is that, solid, does it stand solid or does it swing, is it loose?

A. It is solid.

Q. And if it comes down from the ceiling, what material is it made of; that is, is it wood or iron?

A. That is wood.

Q. Is it wood?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. And then this pulley is put on down at the end of the wood, is it?

A. Yes, sir.

Q. And there is a belt goes through that pulley?

A. There is a shaft, if that is what you mean.

Q. A shaft or really a large belt goes through the pulley?

A. Yes, sir.

Q. Did the McDonough Manufacturing Company furnish this pulley?

A. It did.

Q. And they furnished the belt or shaft that goes through it?

A. Yes, sir.

Q. And then, from that pulley on to the place that that pulley is attached is this long piece of frame work or wood, or board, or something?

A. Yes, sir.

Q. Who always furnishes that?

A. The wood we were to furnish.

Q. Then you furnished that the same as you would a piece of sill or two by four or scantling or any other part of the mill, did you?

A. Yes, sir.

Q. That was really part of the mill?

A. No.

Q. Nevertheless, you furnished it just the same as you would any other portion?

A. Under our contract.

(Testimony of J. R. Bond.)

Q. When you claim that you are asking for these bolts; that is the piece where this long two by four or frame piece attaches onto the mill proper, isn't it?

A. Onto the bridge trees, yes, sir; not the mill proper.

Q. What do you mean by the bridge tree?

A. Which carries the tightener.

Q. The bridge tree is really a part of the mill, a piece of frame?

A. Yes, sir.

Q. What you want in that first item is then to put the bolts through that frame that goes down there?

A. To complete the machine, yes, sir.

Q. In other words, these are the bolts you want, not the bolts that went through the tightener proper?

A. You are referring to the shafts?

Q. No, just answer me. Is that correct?

A. The shaft that went through.

Q. Now, isn't it correct that these are the bolts that you want, the ones that went up there at the top?

A. The U bolts referred to are the ones that went up to the top, yes, sir.

Q. Well, now, I believe yesterday you testified that the edger in this mill was a principal counter?

A. I did not testify.

Q. You did not?

A. I told you that I would not be competent to tell you what was called the principal counter.

Q. You are not competent to tell what would be called the principal counter?

(Testimony of J. R. Bond.)

A. What would be called the counter by mill men.

Q. Well, if you were told then that boxes only on the principal counter or counters in this mill and the line shaft were the ones to be planed, you would not know what they were talking about?

A. No, not without explanation. I could take it all as to the counters.

Q. Well, refer down there to the end of this list which you have submitted and you will notice extra work setting slasher boxes caused by not being planed on back side, \$18.50?

A. Yes, sir.

Q. Now, if that slasher box is not a principal counter then there would be no obligation upon the McDonough Manufacturing Company to have planed it, would there?

A. I don't know.

Q. You are familiar with the setting of gears on live rolls, are you?

A. Yes, sir.

Q. I believe yesterday you said that you had constructed one mill?

A. I said that I never had constructed any entirely.

Q. Well, then, did you, or did you not know whether or not when gears are set too close together that they will not mesh and not run?

A. Yes, I realize that.

Q. Well, now, with reference then to your item down here in the middle of the page somewhere: "Labor moving up gears to live rolls, so they would run," would

(Testimony of J. R. Bond.)

you or would you not say that that might have been on account of the shafts being set too close together?

A. It was not for that reason. There was lumps on some castings and things of that kind.

Q. Did you report that fact to the McDonough Manufacturing Company and ask them to send gears without lumps on them?

A. I'll repeat my answer. I was not dealing with the McDonough Manufacturing Company.

Q. Who did you report it to?

A. The Phelps Lumber Company.

Q. Did you write them a letter to that effect?

A. I don't think so. I could not say now.

Q. Haven't a very definite recollection about it at all?

A. No, sir.

Q. What is all of this back of bolts, down at the bottom all through there?

A. For bridge tie work and constructing tighteners.

Q. Now, as I understand by a bridge tie, it is a frame or a brace which may go in parts of the mill, and these often running diagonally, sometimes running straight across, is it not?

A. Yes, sir.

Q. And these bolts then were put in where that sill or brace went into an up and down portion of the mill or into foundation pieces?

A. No.

Q. Well, tell where they were put.

A. They were put in the construction of the bridge

(Testimony of J. R. Bond.)

tie, in between these pieces. Most of these pieces were drifted in in the frame.

Q. In other words, in different directions and places through the mill, there are large sills or large pieces of timber run across in different directions through the mill, are there not?

A. Yes, sir; for bridge ties.

Q. And those are what you call bridge ties?

A. Put in after the mill is constructed, yes, sir.

Q. But pieces running diagonally, or they are sometimes just called braces?

A. I think so; yes, sir.

Q. Well, assume that that were true. Then these bridge ties run generally out from the side of the mill and in different directions and machinery is bolted onto them, onto these bridge ties, is that correct?

A. Yes, sir.

Q. Well, now, there are then two classes of bolts to be used, are there not?

A. Yes, sir.

Q. First, the bolts that bolt the machinery onto these cross pieces or bridge ties is one class?

A. Yes, sir.

Q. And another class are the bolts which are used to bolt that timber onto the up and down sill in the mill; is that correct?

A. Well, they are used in the construction of that bridge tie.

Q. Well, just answer me. That is correct, if these bolts are the other bolts up there?



(Testimony of J. R. Bond.)

A. No, they are not the other bolts.

Q. Go ahead and tell the jury how it is then?

A. With permission of my attorney, I can show a bridge tie drawn, I guess.

The COURT: What counsel wants to know is whether these bolts are used in bolting the machinery down or in bolting the machinery together.

A. They are not used in either, your honor; they are used in a bridge tie. There are a few bolts or drifts used to connect these bridge ties to the frame. The raisers at that end go right there, but most of these are drifted down to the bridge tie itself. It is simply put in after the mill is constructed, and those are the bolts you are referring to that bolt this bridge tie together.

Q. In other words, the situation is this: that across the mill at different places run large timbers and sometimes connecting between these timbers and other cross timbers are what are known as bridge ties?

A. Yes, sir.

Q. These consist of pieces of timber of different dimensions

A. Yes, sir.

Q. Approximately running up to 12x12?

A. Large pieces of sills.

Q. Of timber?

A. Yes, sir.

Q. Then there are three classes of bolts; there is the class which bolts the main bridge ties that run across the mill proper?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. And there is another class of bolts that bolt the main bridge ties and the cross bridge ties, bolts them together?

A. Yes, sir.

Q. And there is a third class which you use after you get the bridge ties in, which are used to bolt the machinery onto the bridge ties?

A. Yes, sir.

Q. Then, in your list here you have included all three of these classes of bolts, have you?

A. We have included the two. The construction of the bridge tie—no, I am not including those that set the machinery.

Q. You are not including those that set the machinery?

A. No.

Q. That is to say, you have included the ones that bolted onto the sill, the mill proper?

A. No, we have included the one in the construction of the bridge tie. You made three classes. We have used one of the three, the one that constructed the bridge tie.

Q. The one that bolted the bridge tie into the up and down timber or the cross timber?

A. No, that is constructed either across or up and down or where it should go, but not the main mill support, you understand.

Q. Then these bolts were bolts that went through wood?

A. Yes, sir.

(Testimony of J. R. Bond.)

Q. Furnished by the Phelps Lumber Company, and not through necessarily any part of the machinery?

A. No, they didn't necessarily go through any part of the machinery.

Q. Well, Mr. Bond, the only manner in which you arrived at the amount of sheet iron that was necessary to iron these conveyors, is from the amount which was actually used, not from any prior experience?

A. No, in my report this morning there was a lot of stuff that was used that was required to complete it.

Q. But if you were asked to estimate the amount of sheet iron necessary to iron the conveyors and log slip in the mill, in the manner in which they are usually ironed, you would not know, for a mill of that size? Just would you or would you not?

A. Yes, I would.

Q. You would?

A. Yes, sir.

Q. How would you know

A. From past experience.

Q. I believe you said yesterday that the only log deck you ever saw ironed was one you ironed yourself?

A. Oh, no.

Q. You didn't say that?

A. Oh, no.

Q. Now, describe to the jury what this piping was used for, what you have designated in that long list; just generally what classes of work it was used in?

A. Well, there is the steam lines from the boilers, the big steam lines from the boilers to the mill, which

(Testimony of J. R. Bond.)

is divided and went to the shotgun and nigger and such other steam devices as there is in the mill; water lines that went to the boxes, water boxes and the pump suction. Now, I would not be competent to say whether the two-inch pipe was used in this or not. I would have to ask Mr. Phelps.

Mr. WILLIAMS: That is, you do not know whether it was included in that list or not?

A. No, I would not be competent to tell offhand; no way of knowing.

Mr. McCARTHY: What do you mean by the two-inch standpipe?

A. There is two two-inch standpipes run up one on each side of the mill, water pipes. One of them conveyed—one of them water for the band mill comes off from, and also conveys fire protection to the filing room. There are two of these that are—well, I couldn't tell the length of them, perhaps forty feet on the whole—no, one of them is forty feet and the other is about thirty.

Q. One of these standpipes is forty feet high?

A. Runs up about forty feet in the mill—no, it is about thirty-six feet and the other runs about twenty-two feet.

Q. And they are right on the sides of the mill, are they?

A. Yes, sir.

Q. And how large are they?

A. The interior diameter is two inches.

Q. You say there is piping coming off from them

(Testimony of J. R. Bond.)

for fire protection and for leading water to the different machines?

A. Yes, used for both purposes.

Q. Now, as I understand it, in a mill there are three necessary classes of piping: One for the purpose of conveying the steam from the engine about to the different places and another for conveying water to the different machines for the purpose of cooling them, to journals and boxes in the different machines and others for fire protection?

A. That is correct, and then the exhaust pipes.

Q. The what?

A. The exhaust pipes makes four.

Q. What are they?

A. They exhaust steam from the nigger and shotgun, cylinders of various kinds.

Q. Well, where do you get your water supply from up there at the mill?

A. From the river.

Q. Pumped in a pipe underground?

A. Yes, sir.

Q. That pipe is included there, I suppose, is it?

A. I will have to ask Mr. Phelps. I could run through and tell you, though.

Q. All right, do so.

A. I don't find it here, but it might have been in here. I don't think that it is in here, but it might be, though.

Q. What would the size of that pipe be, Mr. Bond?

A. The size was six inches.

(Testimony of J. R. Bond.)

Q. It was six-inch pipe?

A. Yes, sir. That is the pipe running down to the river?

Q. Yes, from the river up to the mill?

A. Yes, sir.

Q. How is the water brought up there?

A. With a pump.

Q. How far is it; how long is the pipe?

A. I think it is about 182 feet.

Q. Mr. Bond, will you explain why you used the 211 feet of six-inch pipe which you have included there on page 2B, Exhibit B, that is only a part of it; there is other amounts through there making up the amount indicated?

A. I would say that that included the main steam pipe and a portion of the suction pipe. Understand, I don't swear to that, you see. I am sure that it does do that, includes the main steam pipe to the engine and a portion of the suction pipe to the pump.

Q. Well, how long is that main steam pipe from the steam drum to the engine?

A. Well, I should think that the straight piece that went across was—I could tell something there about it by referring to some notes I have in my grip; may I?

Q. Just approximately, you know how big the boiler house is?

A. I should think perhaps it would be perhaps fifty feet, going across there and down, maybe more.

Q. Where else would you use it, then, besides that?

(Testimony of J. R. Bond.)

A. Then—we reduced a six-inch I believe inside the mill to five or four.

Q. Do you know where you used the remainder of that six-inch pipe?

A. I can't say the exact places.

Q. Now, Mr. Bond, in your statement here, among other things, you have eighty feet of seven-inch pipe; where did you use that?

A. That is the exhaust and steam line going into the sawmill.

Q. The exhaust from the main engine?

A. Yes, sir.

Q. How long is that?

A. It must be about sixty something.

Q. Why do you have an exhaust that long?

A. To clear the building.

Q. Then you used, you think, this seven-inch piping as exhaust?

A. Yes, sir, from the engine and also in the mill from the main steam line.

Q. That is what takes the steam from the steam drum through the mill to be distributed around the machines?

A. Yes, sir.

Q. All of that is carried up outside of this fifty feet of six-inch pipe which you used in connecting up the steam drum with the main engine. What did you use the remainder of that 211 feet other than the 50 feet which you have accounted for; did you use some of this main exhaust for the shotgun?

(Testimony of J. R. Bond.)

A. I think it was six inches, the exhaust, I can't testify to that. It was either five or six inches the exhaust of the shotgun.

Q. Well, is that a portion of that pipe that you do know the use of, that you used in quantity?

A. Yes, I know the size of the four-inch, the main steam line, the size of the line that runs to the shotgun, that that is connected to the shotgun—no, I would say that that is a five-inch, the exhaust to the shotgun.

Q. Five-inch?

A. Yes, sir, of the six-inch. Whatever is over and above this used in this steam line, as far as I know, must have went in the suction of the pump.

Q. Is there any other pipe that you used about the mill that you have not mentioned other than the pipe that ran down to the river?

A. Yes.

Q. You did use other pipe?

A. Yes, we used quite a little of it.

Q. How much?

A. Well, we used—I can't give you the exact number of feet. I think about 140 feet. We will put it about 100 feet of six-inch and I believe—I can't give you the figures without referring to notes I have here.

Q. Yes, but approximately?

A. That would be hard to give.

Q. Well, was it 100 six-inch which was run down to the river?

A. That is part of that pipe that was run down to the river, if it is not included in here, you understand. I have not been able to look this over. You can get another witness to prove that who knows.



(Testimony of J. R. Bond.)

Q. But part of this 100 feet of what you have been referring to was used for the purpose of drawing the water from the river up into the mill.

A. I would think so.

Q. But you don't know?

A. No.

Q. All right. You don't know whether there was any other pipe used, other than that which was not included in that list?

A. Yes, sir, I do know that.

Q. There was other piping?

A. Yes.

Q. What was it?

A. There was some of this six-inch pipe that I know of. How much I don't know.

Q. But you don't know of any other pipe, other than this?

A. Yes, there was some five-inch pipe, some water pipe outside that was used?

Q. Five-inch water pipe outside?

Mr. WILLIAMS: Is that something which is not included in this list?

Mr. McCARTHY: Yes, sir.

A. Well, it extends from the north side of the mill some feet out north of the mill for fire protection.

Q. Well, outside of that six-inch and the five-inch, you don't know of any other?

A. I don't know of any now.

Q. Now, Mr. Bond, you have included in this statement of yours 370 feet of four-inch pipe. Will you just

(Testimony of J. R. Bond.)

designate what is the manner you used that pipe, if you can?

A. Well, we have used four-inch pipe for the conveying system and portions of the shotgun, for connecting up the shotgun.

Q. Well, now, just give me this item by item as you go along, as far as you can?

A. Well, for the connection pipe, part of the distance to the shotgun.

Q. How much was that?

A. I can't give you that length.

Q. Can't you guess at it?

A. I can guess at it fifty or sixty feet.

Q. Well, will you say sixty feet?

A. Probably eight or nine feet of that was connected also with the shotgun.

Q. Let me ask you in connection with that. Now, it is the pipe which connects the steam, from where it comes in from the power plant proper to what is known as the shotgun, which is the steam chest which throws the carriage from one side to the other, is it not?

A. Well, it connected the pipes that connect the two valves. You understand, your theory is correct, but there is a pipe that connects the two valves that this pipe conveyed to.

Q. How long is the shotgun?

A. Forty-two feet.

Q. And this, then, is not the pipe which brought the steam in from the engine?

(Testimony of J. R. Bond.)

A. Yes, that is the pipe. But it is not the pipe that goes between the valves. That was furnished by the McDonough Manufacturing Company, the pipes between the valves.

Q. The pipe between the valves was furnished by the McDonough Manufacturing Company?

A. Yes, sir.

Q. And that four-inch pipe is the pipe which brings the steam in from the steam chest inside?

A. Yes, sir.

Q. How far is it from the shotgun which you have described to the steam chest in the boiler room; how far apart are they?

A. That does not go to the steam chest, not all of that distance. That would be 70 or 80 feet. This goes, the seven-inch pipe, that I should judge was about fifty feet, some such distance.

Q. Well, we will say, then, that you used sixty feet there?

A. Yes, sir.

Q. That would be satisfactory?

A. Yes, sir.

Q. Well, now, what other places did you use any of that?

A. On the suction for the continuation of the suction for the pump of the boiler.

Q. How much?

A. Probably forty-five to fifty feet.

Q. Well, there was forty-five to fifty feet of that, we will say fifty feet to make it even. There was no other

(Testimony of J. R. Bond.)

place that occurs to you that you could possibly have conveyed it?

A. In conveying water under the mill for the use of the machines.

Q. What is it?

A. And fire protection.

Q. What was that; I didn't quite catch the first ones?

A. Conveying the water under the mill so that we could tap the main for more water to the boxes, and fire, both.

Q. That is, you put it in the ground to convey the water?

A. Yes, sir.

Q. From what did the water come out in the ground?

A. That came from the pump, came from up the river.

Q. Came from the river up through the pump?

A. Yes, sir.

Q. Then you didn't use seven-inch pipe all the way from the river into the mill?

A. We didn't use any.

Q. What sized pipe?

A. Six inch.

Q. Then, part of this pipe was used in connecting onto that six-inch pipe which you brought water to the mill with, was it?

A. Yes, sir.

Q. How many feet of it was used for that purpose?

A. Well, I think that we used a five-inch pipe up to the edge of the mill.

(Testimony of J. R. Bond.)

Q. Now, Mr. Bond, just tell me how many feet you are going to assign for that purpose?

A. I am trying to tell you plainly. That is what I wish to do. A four-inch further in would be thirty—let's see, thirty-eight feet, I believe, something like that.

Q. All right, that would be thirty-eight feet more of this four-inch pipe accounted for?

A. You want others.

The COURT: Go ahead and account for the rest.

A. From there across through the mill, I believe we ran about forty feet more before we reduced.

Q. Then forty feet of it was running from the place the water entered the mill down to the ground over to what?

A. Down to the standpipe on the other side of the mill.

Q. The standpipe is on the outside of the mill?

A. On the other side of the mill, on the inside of the mill, yes, sir.

Q. You ran to a standpipe on the inside of the mill?

A. Yes, sir.

Q. Go ahead now, accounting for this?

A. Now, then, there was perhaps twenty feet more used around the niggers, in a joint around the niggers and kickers, I think. Put it ten feet. That is all I remember of.

Q. Will you account for the two-inch pipe which you used in the mill?

A. That would be impossible here on the witness stand. I could give some kind of an idea to the jury

(Testimony of J. R. Bond.)

what it was used for. There is a two-inch boiler feed.

Q. Now, just say what amount you want or refer to your own statement there?

A. You want the various lengths, do you?

Q. Certainly.

A. Well, now, you understand I can't swear to any of these lengths from memory. I will give them to you as near as I can remember it. We will say there was sixty feet in these steam pipes—there was more than sixty feet in the steam pipes.

Q. Call it seventy, then.

A. I presume there was possibly eighty or ninety, perhaps one hundred feet used in the steam connections around the niggers and loaders and there was perhaps sixty feet going up to the side of the mill for the filing room steam.

A. Well, I would estimate that there was perhaps one hundred and fifty feet over the boilers and around the boilers. These are only estimates.

Q. How much do you want to estimate in these connections?

A. Well, I would cut it to 125 feet. That is all I can think of.

Q. How would you be able to use 125 feet of two-inch pipe in and around the boiler?

A. Well, for water, various things of that kind, steam.

Q. You have already used a six or seven inch pipe to draw the steam over?

(Testimony of J. R. Bond.)

A. Well, there is an injector and water and a pump and three boilers to feed with pipes.

Q. What is that pump for?

A. Pump for feeding the boilers with water, boiler feed pump.

Q. And is there a fire pump there?

A. No, that is outside.

Q. You have not assigned any of this 125 feet; you wouldn't us any of it?

A. No, I think two and a half went to the fire pump; I don't think any of the two-inch went to the fire pump.

Q. Now, if you used two-inch pipe in the steam connections and the nigger and the loader, where did you use the inch and a half pipe?

A. Well, the inch and a half was reduced from two with T above an inch and a half, came down to the valves.

Q. Well, would there be much of that required, then, if you used that much two inch?

A. I couldn't give any definite number of feet there at all. I believe we ran across the mill with the two-inch to the kicker, although I am not sure.

Q. You don't know how much you can say for that purpose?

A. I told you when I gave you that that this was an estimate absolutely. All of this work, gentlemen, that I am telling you here, I want you to understand is simply an estimate, taking it from the point that it is a long ways from here to the mill.

Q. Mr. Bond, you made that statement, did you not?

(Testimony of J. R. Bond.)

A. I made that statement quite a long time ago and I checked it with the statement I made—with the statement that was then made.

Q. Well, you can't account for any of this inch and a half pipe exactly?

A. I perhaps can account for considerable of it, but not enough perhaps to cover that, because that would be impossible without going up there and going and measuring the pipe.

Q. You cannot even approximate, then, how much you used actually?

A. I would not want to do it without measuring it up there.

Q. The next item is the item of paint, where did you use the paint here mentioned in your list?

A. Joints, making joints.

Q. The joints were not defective in any way, were they?

A. Not that I know of. Just let me see. I would like to see the item.

Mr. McCARTHY: I would like to offer for the purpose of identification this blue print.

The blue print referred to by counsel marked PLAINTIFF'S EXHIBIT 77, for identification.

Q. I would like to ask you whether you saw and used these specifications or one similar to that as being sent to you about the last week in November, this Plaintiff's Exhibit 77?

A. Why, this looks very similar to one of the blue



(Testimony of J. R. Bond.)

prints that we had. I cannot give the date, but I think about that time.

Q. And did you find that of value or use to you in the construction of the mill?

A. Why, the one that we had was of value.

Q. What do you say you are doing now?

A. I am attending a trial here at Spokane, M. A. Phelps Lumber Company.

Q. Well, that is not going to be your permanent occupation, is it?

A. For all that I know.

The COURT: He wants to know what your occupation is at the present time.

A. I haven't any occupation at the present time. I left the Phelps Lumber Company on the 1st of March.

RE-DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. In this bill is anything included for fire protection or where the pipe has been used in any shape for fire protection, where adjustment has been made in making up this statement?

A. They do the same service that the boiler feed pumps would have done and I believe that the difference was made in the invoice.

Q. This six-inch piping, you spoke something about possibly some of it was used for suction. Explain to the jury just where the pump stood with reference to the mill, the feed pumps for the mill?

A. The feed pumps for the mill stood on the right hand of the front of the boiler.

(Testimony of M. A. Phelps.)

Q. What I am referring to is the pump that draws the water from the river ; where does that stand with reference to the boiler ?

A. That stands outside of the boiler about thirty feet.

Q. Is there a pipe running from that engine into the mill and also a pipe running from that engine down to the river ?

A. Yes, sir.

Q. Was any of the six-inch pipe that is in this bill included for the space between the engine, this engine that I am referring to, and the river bank ?

A. Well, I would not—I could not say as to that ; I could not give an estimate on it.

Q. Do you know anything about Mr. Phelps buying any second-hand six-inch pipe anywhere and using it ?

A. I do.

Q. This four-inch pipe that you refer to, what kind of pipe was used around the boiler feed pump ?

A. Four-inch.

Q. How much four-inch was used in there ?

A. I can't give you that exactly, the number of feet. That is all.

Witness excused.

M. A. PHELPS, recalled on behalf of the defendant.

DIRECT EXAMINATION.

By Mr. WILLIAMS :

Q. Mr. Phelps, you have already been sworn, I believe ?

(Testimony of M. A. Phelps.)

A. Yes, sir.

Q. Who had charge generally of buying and paying for these pipes, valves and fittings, that went into the mill and which were not furnished by the McDonough Manufacturing Company, but later, after their letter, were furnished by the Phelps Lumber Company?

A. I paid for all of it and ordered the larger part of it. I think that there was some portions possibly might have been ordered by 'phone when they was in a hurry for it.

Q. Did you check the items yourself personally; did you go over that before you paid for them?

A. Yes.

Q. Look at that exhibit there, look at it from page to page—did you assist in preparing that, Mr. Phelps?

A. Yes. I gave our bookkeeper what went into this part of the construction and what we used for other purposes.

Q. State what the facts are as to whether those amounts shown there on those different pages, are the amounts which you paid for that material?

A. Yes.

Q. What, if anything, did you do with reference to trying to buy as economically or as cheaply as possible?

A. We got the jobbing price and we took the 2 per cent discount, which we allowed the McDonough people.

Q. Was that the best discount that could be got?

A. Best discount we could get.

Q. When you spoke of jobbing—

(Testimony of M. A. Phelps.)

A. (Interrupting) I would change that. That 2 per cent is off after the regular discounts are taken.

Q. But what I want to know, is that the best jobber's discount?

A. Yes, that is the best I could get.

Q. Now, from what firms was this material purchased. I direct your attention simply to a little item on the heading of the bill here and the places that they came from. Is that correct?

A. Well, the material that he bought, those are the ones that he bought from.

The COURT: No contention, then, over the prices.

A. No, I know he bought them from a number of different places.

Mr. WILLIAMS: Q. Mr. Phelps, about this conveyor iron that Mr. Bond was interrogated about, what is the fact as to whether this was necessary in the construction of the mill?

A. Absolutely.

Q. Mr. Phelps, what money, if any, did you pay the McDonough Manufacturing Company through Mr. McIntyre?

A. I paid him forty dollars at one time and twenty dollars at another.

Q. Sixty dollars in all?

A. Sixty dollars.

Q. Was the mill equipped in the summer of 1911 or the fall of 1911 to run of nights?

A. No, sir.

(Testimony of M. A. Phelps.)

Q. If you had have equipped the mill and run it of nights——

A. It was not equipped with lights sufficient.

Q. Could you have minimized these damages on account of these logs by running nights?

A. If we had been equipped we could have cut them.

Q. Could you have done it economically so as to save that damage?

A. It would cost more to run nights than day times.

Q. How much more, with reference to this item of damages that I am referring to, would it cost that much or less?

A. I don't understand you.

Q. How much more would it cost to run nights than days to cut out this three million nine hundred thousand feet?

A. I think about fifteen per cent more.

Q. What would that be in dollars?

A. You mean per thousand?

The COURT: Or day, or any other way.

A. It would be a matter of fifteen dollars a day or twenty dollars.

Mr. WILLIAMS: Q. What is that?

A. Fifteen or twenty dollars a day.

#### CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Now, you claim that you were damaged principally in the failure of the McDonough Manufacturing Company to furnish all the items set out in this page attached to that complaint?

(Testimony of M. A. Phelps.)

A. Yes, sir.

Q. I see one item there of damage on account of their failure to furnish a centering mandrel?

A. I think so.

Q. And that is true?

A. Yes.

Q. That centering mandrel, as I understand it, is used for the purpose of grinding the saws for the edger machine, is it not?

A. My understanding is it is used for any circular saw.

Q. For grinding circular saws, then?

A. Yes.

Q. That would include the edger saws, would it not?

A. Probably would. I am not positive on that.

Q. Well, aren't edger saws circular saws?

A. Yes.

Q. Would it or would it not?

A. I wouldn't want to say positively. I think it would.

The COURT: It don't seem to me that this is proper cross-examination at all.

Mr. McCARTHY: Yes, I think they were developed. This is very relevant.

Q. I will ask you first if it is not a fact that circular saws—

The COURT: All this witness has testified to is that he paid these items. If you want to show he didn't pay them you can do so.

(Testimony of M. A. Phelps.)

Mr. McCARTHY: He also testified they were necessary items for the completion of the mill.

The COURT: I did not so understand it.

Mr. McCARTHY: Did you, or did you not?

The COURT: That is, necessary items to complete this contract?

A. To complete the contract, yes.

Q. Well, now, Mr. Phelps, these circular saws are attached to a shaft, are they not, which turns around?

A. A mandrel while they are running.

Q. But in the mandrel, the shaft that runs through the circular saws, while they are running, in operation, what do you call the large washers which are in this shaft, on each side of the saws, which holds them in place?

A. Collars.

Q. And there are two of these washers or collars on each saw, is there not?

A. Yes, usually on the mandrel there is one collar that is fastened and one that is loose.

Q. There is one fastened onto the saw and one that is not?

A. Not fastened onto the saw, no. Well, it might be fastened.

Witness excused.

WHEREUPON the following PLAINTIFF'S EXHIBITS were admitted in evidence and read into the record: 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87.

M. A. PHELPS, recalled for further direct examination, testified as follows:

(Testimony of M. A. Phelps.)

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Look at this letter and see if this will refresh your recollection, first, as to the time the last full car shipment was made by the McDonough Manufacturing Company; see if that will refresh your recollection?

A. That would possibly be about the time.

Q. What date?

A. That is dated April 20th, 1911.

Q. And look at this and see if it will refresh your recollection as to the time the last full car was shipped by the Muskegan Boiler Works?

A. That would possibly be about the time.

Q. What is the date?

A. Dated May 9th.

Q. Would you say that is about the time?

A. I should say so.

Q. Was there afterwards any other material came from the McDonough Manufacturing Company in completing this order than in that full car?

A. Yes, sir.

Q. What was this?

A. Came in the last car with the boiler material.

Q. Who loaded it, the Muskegan Boiler Works.

A. It was shipped to Muskegan and then shipped with the boiler, last car of boiler material.

Q. What was that?

A. Some chain, and I don't know just what.

CROSS-EXAMINATION.

By Mr. McCARTHY:



(Testimony of M. A. Phelps.)

Q. How many feet of chain did the specifications provide for?

A. I can't say offhand.

Q. How many feet of log chain?

A. I don't remember.

Q. Was this chain which you ordered included in this forty-page specification, or was it additional chain?

A. All the chain we ordered was to complete the contract. The chain specified in the specifications was an estimate, as I understand it, but they was to furnish enough to complete the contract upon the machinery.

WHEREUPON the following PLAINTIFF'S EXHIBITS were offered in evidence and admitted without objection and read into the record: 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118 and 119.

M. A. PHELPS, recalled on behalf of the plaintiff, in rebuttal, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Mr. Phelps, did you or did you not, with Mr. McIntyre, go to Cusick, Washington, on or about April 13th, 1911?

A. I don't think so. I was there once with Mr. McIntyre, but I think it was an earlier date than that.

Q. An earlier date than April?

A. I think so; I can't say.

Q. Approximately, what was the date?

(Testimony of M. A. Phelps.)

A. I couldn't say. It might have been in—I think it was the first time Mr. McIntyre went there.

Q. Did he, or did he not, make measurements for piping at that time?

A. I don't think that he did, but I don't know.

Q. You were not with him at the time, at least, that he made the measurements?

A. I know he told me afterwards——

Mr. WILLIAMS: Well, don't—that is not called for in the question, Mr. Phelps.

The COURT: Answer the question directly, Mr. Phelps.

A. No.

Q. Was he or was he not in your office prior to that trip which he made with you to Cusick?

A. I can't remember. I presume that he might have been, but I can't remember.

Q. Did he at the visit to your office have a conversation with you concerning the amount of piping that would be required?

A. The question of pipe was talked over at one time when he had been in there.

Q. Did you tell him the amount which would be required?

A. No, sir.

Q. You did not?

A. No.

Q. What was his purpose, if you know, of going to Cusick with you on that trip?

A. The only thing I remember, when he was at

(Testimony of M. A. Phelps.)

Cusick he went down there to take measurements to draw some plans for the mill, when he was there. I should say it was before the first of June, but I would not be positive. I think so.

Q. When do you say that trip was made to Cusick with you and Mr. McIntyre?

A. I didn't say.

Q. That trip that you recall was made before the first of January?

A. I think so.

Q. Did he accompany you on that trip or go alone?

A. I think we went on the same train, together. It may have been that he went the next day, I couldn't say.

Q. Well, did you or did you not state to Mr. McIntyre on or about April 10th that the work in the mill had already proceeded to such an extent that the amount of piping could be determined by measurements?

A. I don't think so.

Q. Do you swear that you did not?

A. Yes.

Q. You do?

A. Yes.

Q. When did you put in the water main to your mill?

A. Water main from where?

Q. From the river?

A. I think the pump house was built in—I should judge about the first of December, and I think the pipes were put in directly after that.

Q. Do you swear that you had your water main established before April 13th, 1911?

(Testimony of M. A. Phelps.)

A. The water main from the river to the pump house, yes.

Q. Well, what portion of the water main system was not established on that date?

A. From the—I don't think there was any except from the river to the pump house.

A. Are there not water mains around the mill?

A. Close around the mill?

Q. Anywhere; describe where they are?

A. There is a set of water mains, yes—don't run to the mill, though.

Q. Where are they to?

A. They run through the mill and into the boiler house.

Q. Were they established on April 13, 1911?

A. I think the main pipes possibly were, probably were.

Q. Were you at the mill on or about April 13th?

A. I can't say the exact date. I was there about a week.

Q. Was the nigger bar set on its foundation on April 12th or 13th?

A. I should say it was; I can't remember.

Q. Was it set approximately on that date?

A. I can't say the exact date.

Q. You would not be sure that it was?

A. I should say all of that was set before that, but I can't say.

Q. All what?

(Testimony of M. A. Phelps.)

A. A great deal of the machinery that was there that we received was set before that.

Q. You don't know about the nigger bar, whether the nigger was set on its foundation or not.

A. I can't remember any particular piece.

Q. Was the log stock and loader cylinder stock set on the 13th of April, or was it not?

A. I couldn't say.

Q. Do you know what these appliances or either of them cover?

A. I could tell by looking it up. I could not offhand.

Q. Do you know whether on April 13th the foundation for the log stock and loader were built, the foundation on which these machines were to stand?

A. I think that was built much earlier than that, the foundation.

Q. But you don't know?

A. Well, I think so. I couldn't state the date exactly.

Q. Did or did you not go with Mr. McIntyre to buy the piping and charge—have it charged to the account of the McDonough Manufacturing Company on April 13th?

A. I don't think there was any agreement to that effect.

Q. Well, when did you have any agreement with McIntyre with reference to that?

A. I don't think there was any agreement.

Q. There was no agreement?

A. No.

(Testimony of M. A. Phelps.)

Q. Well, what conversation, if any, did you and Mr. McIntyre have concerning the piping?

A. Well, Mr. McIntyre stated that the only practical way would be to—if the pipe was not sent from the East when we got ready for it, was to purchase it.

Q. Mr. McIntyre said if the pipe was not sent from the East when you got ready for it to purchase it?

A. He said that was the only practical way.

Q. Well, do you remember whether that was on or about April 13th, that he stated that?

A. I can't remember the date.

Q. It might have been?

A. It might or might not. I cannot say the date.

Q. Mr. Phelps, is it or is it not true that you handed to Mr. McIntyre a letter signed by yourself in which you asked permission, asked Mr. McIntyre to procure permission from the McDonough Manufacturing Company to permit you to buy the piping?

A. It is possible. I would not want to say.

Q. And did Mr. McIntyre reply to that?

A. I don't remember.

Q. About when was it you wrote that letter?

A. I can't remember that either. I don't remember writing such a letter, still I might. I don't remember.

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. What was your reason for your finally purchasing the pipe yourself?

A. Why, we had to complete the plant in some way.

(Testimony of M. A. Phelps.)

Q. Had you had any talk with McIntyre about his furnishing it or his company furnishing it?

A. Had considerable talk about how it was to be furnished.

Q. Had they ever furnished it?

A. No, sir.

Q. Had you any other way of getting it than going and buying it yourself?

A. No, sir.

Q. Now, about this water main that you say was put in between the pump house and the river. Was any of that water main put into this mill that you have charged to the McDonough Manufacturing Company?

A. Not that I know of; I don't think so.

Q. Where did that pipe come from?

A. We bought that of the—at a mill that was being demolished there.

Q. That was second-hand pipe?

A. Yes.

Q. Which you didn't buy in the market.

RE-DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Well, what other pipe did you use about the mill which you have not charged in your account to the McDonough Manufacturing Company?

A. We have used considerable. I can't state just where. There was considerable used.

Q. Why did you use the other pipe; why didn't you charge that to us also?

(Testimony of M. A. Phelps.)

A. Because I didn't think it should be charged to them.

Q. Well, what did that pipe consist of?

A. I think there was four-inch pipe that we laid that was not charged to them, and some other pipe and——

Q. (Interrupting). And did this pipe——

Mr. WILLIAMS: Was he going to say something more?

A. (Continuing). ——there that would be used both for fire protection and for other purposes, that would go in in this contract, and instead of using two pipes we used one for both purposes; and other pipe that we made no charge for, we figured would offset any expense there was in fire protection.

Q. Then this pipe that came up from the river into the mill?

A. Went into the pump house.

Q. Then what was the system further on?

A. It was the pipe system to the boiler room. To explain more fully: Where the boiler room is—a boiler feed pump, setting where it does set on the ground, would not raise the water from the river at low water. It is something like thirty feet. It is not practicable to raise water more than fifteen or eighteen feet. So we went to the bank of the river and built a concrete pump house so that we only had to raise it about fifteen feet. We put in a pump there, and it is not included in any of these.

Q. Well, but is there not a large main pipe set on the



(Testimony of M. A. Phelps.)

ground in the mill, large mains, or do they not constitute a part of the system?

A. There is a four-inch pipe that runs in through the mill.

Q. And that is not charged in here, is it?

A. There is a portion of it that is and a portion of it is not, as I remember it.

Q. And when was that set there?

A. I can't tell the exact date.

Q. Well, approximately, when was it set there?

A. Well, I just presume that was put in there early in the year, but that would be—

Q. (Interrupting). While the frost was still in the ground?

A. Well, it was before the frost was in the ground.

Q. You had it in then before the frost was in the ground?

A. There was very little frost in the ground there.

Q. What?

A. There was very little frost in the ground there.

Q. You don't know when you put that in?

A. No, I couldn't say.

Q. And did the pipe that the McDonough Manufacturing Company were to furnish attach onto that?

A. That they furnished—they did not attach, no.

Q. Well, but the pipe which you have there, that would?

A. I presume it did, yes.

Q. And then, the amount they were to furnish could

(Testimony of J. W. Hubbard.)

not have been determined until it was known what you were to supply, then, of the main pipe, could it?

A. Well, I don't know. I think that main pipe was laid early in the season, early—I should presume——

Q. (Interrupting). Then you don't know?

A. Well, I don't know the exact date.

Witness excused.

J. W. HUBBARD, a witness called in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. What is your name?

A. J. W. Hubbard.

Q. And where do you reside?

A. Eau Claire, Wisconsin.

Q. And you are the president of the McDonough Manufacturing Company?

A. I am.

Q. The plaintiff here?

A. Yes.

Q. And how long have you held that position?

A. Three years with the present company.

Q. The McDonough Manufacturing Company is engaged in the manufacture of saw mill machinery?

A. Yes.

Q. Engines?

A. Yes.

Q. And other kinds of machinery?

A. Yes, they are.

(Testimony of J. W. Hubbard.)

Q. What has been your occupation prior to that time?

A. Prior to the past three years I was salesman for two years.

Q. How long have you been connected with the McDonough Manufacturing Company?

A. Eighteen and a half years.

Q. You may state briefly what has been your experience during the time you have been connected with the company, from the first, very briefly?

A. Why, I started in in October, 1893, to learn the machinist trade with the company. I spent seven years as machinist in the shops and three years as a salesman, and afterwards went into the office as order and bill clerk.

Q. And while you were salesman have you had occasion to submit offers and solicit offers for boilers?

A. I have, in several cases.

Q. For how many years?

A. Two years as a salesman and during the last three years I have had more or less to do with that, too.

Q. Did you meet Mr. Phelps, the defendant, in Spokane on or about September 15th, 1910?

A. I did.

Q. And was a written instrument, on or about that time, signed by the defendant, Mr. Phelps?

A. It was.

Q. That is the instrument which has been introduced and referred to as being signed by Mr. Phelps on September 15th, is it not?

A. Yes.

(Testimony of J. W. Hubbard.)

Q. You may examine that instrument and state if you know what it is?

A. It is a proposition from the Muskegan Boiler Works to build a two-boiler proposition, Number 1371.

Q. And what, if any, connection did they—what use was made of it on September 15th, or thereabouts, when that instrument was signed?

A. It was handed to us as part of the order from Mr. Phelps.

Q. I will ask you if you will examine that instrument marked Plaintiff's Exhibit 39, for identification, and state if you know what it is?

A. It is the list of machinery and material to be furnished under the order dated September 15th.

Mr. McCARTHY: We offer Exhibit 40 in evidence. Received in evidence and marked PLAINTIFF'S EXHIBIT 40, and read into the record.

Q. At the time the instrument dated September 15th, and referred to as the contract herein was entered, was this instrument also present and referred to as part of the contract?

A. It was.

Q. Did you, on September 15th, have any conversation with Mr. Phelps about the time at which he intended sawing?

A. No.

Q. Did he make any statements with reference to his timber being standing timber or burnt over timber to you?

A. Standing timber that had not been burnt.

(Testimony of J. W. Hubbard.)

Q. At whose instance was the date "On or about April 1st" inserted in the contract?

A. My own.

Q. Did you, after the contract was entered into on September 15th, proceed to have plans drawn for the erection of that machinery?

A. We did.

Q. And afterwards you caused these plans to be submitted to Mr. Phelps of the Phelps Lumber Company?

A. We did.

Q. Have you got here with you copies of the plans which you prepared and submitted?

A. I have.

Q. You may produce them.

A. The first one this way.

Q. Mr. Hubbard, after your return to Eau Claire, Wisconsin, which was on or about September 15th, did you receive complaint by letter from Mr. Phelps and the Phelps Lumber Company? What action, if any, did you take ultimately as a result of the letters of complaint?

A. Well, finally, I came out the second time to check over the order.

Q. About what time did you come back again?

A. Got here about the 6th to the 8th of November.

Q. And you met Mr. Phelps?

A. I did.

Q. And what ultimately did you and he agree upon with reference to the matters of complaint?

A. Well, we drew up in a little more detail the specifications which you had there, and added additional pages

(Testimony of J. W. Hubbard.)

to them, the specifications; that is, in connection with our contract of September 15th, and we changed to some extent the terms of payment agreed on at that time.

Q. And at the time the specifications were drawn was the words—these words inserted in the original instrument dated September 15th: “All as per specification 10,915 attached”?

A. Yes, they were inserted at that time.

Q. What other change, if any, was made in this instrument dated September 15th?

A. The original agreement was the machinery was to be F. O. B. cars Eau Claire, with freight allowed to Cusick, but Mr. Phelps wanted it in that the machinery was to be delivered at Cusick.

Q. At whose suggestions were these changes both made?

A. At Mr. Phelps' own suggestion.

Q. And at whose suggestion were the numbers 10,915 inserted in the different pages through the instrument?

A. Well, they were put in there as an identification of the complete specifications, so there wouldn't be any further misunderstanding or changes to be made, they were put in the first statement and each important part of it, and then on the last page, which was signed.

Q. These specifications refer to two 72 by 8 Muskegon boilers—to two Muskegon boilers, anyway, as per their specifications number 1371?

A. Yes.

(Testimony of J. W. Hubbard.)

Q. I will ask you to examine this instrument which has been introduced in evidence and state whether that is the instrument referred to as section 1371?

A. It is.

Q. And when was this instrument "Terms" attached to the specifications, at the time they were signed?

A. Yes, they were attached, one complete copy.

Q. And was it done for the purpose of approving the specifications?

A. Yes.

Q. Who wrote these pencil mark checks opposite each item in the specifications?

A. I believe these are Mr. Phelps'. He checked the specifications with the drawing and wrote these check marks on to be sure they were all there.

Q. By "Drawing" you mean the plans?

A. Yes, sir.

Q. You heard the statement of Mr. Bond and Mr. Phelps to the effect that when you came out here on that trip in November, that they or either of them stated to you that it was their intention to commence sawing some time during the following season; or words to that effect?

A. I remember some such testimony; something of that kind was said here.

Q. What is the fact as to whether or not such statements were made to you?

A. There was absolutely nothing said about cutting timber in any way, shape or form; absolutely nothing.

Q. Well, do you recall any change that was requested by letter?

(Testimony of J. W. Hubbard.)

A. Yes.

The four sheets admitted in evidence and marked PLAINTIFF'S EXHIBIT 120.

Q. Examine this and state whether that approximately indicates the plan of the machinery as it is in the Phelps Lumber Company mill at Cusick and upon which the mill was built?

A. These are the plans that the mill was built after. They were drawn by Mr. McIntyre here in Spokane just before November 12th.

Q. You may, using these plans, find, if you can, therein, the instrument described as the hog?

A. Section 118.

Q. This machine here? (Indicating).

A. Marked number 118.

Q. You may state what were the delays in the shipment of machinery mentioned in the contract of November 12?

A. Well, at the time this order was agreed upon it specified two boilers. After it was drawn up Mr. Phelps asked us—said that he would use—decided afterward that he would use three boilers instead of two and asked us to get a proposition from the Muskegon Boiler Works on three boilers instead of two, increasing it one-half. We immediately started to get this, and we got the boiler proposition after about thirty days from the Muskegon Boiler Works and submitted it to Mr. Phelps. He accepted it some time later, as shown in the correspondence. I don't remember how much later, and the contract says also that the drawings were to be made subject to Mr.



(Testimony of J. W. Hubbard.)

Phelps' approval. They changed the boiler room entirely, it increased the size of it and increased the breeching, increased the smoke stack, increased the feed water pump, it increased the steel casing, which was a special steel casing made around this boiler, and added another boiler to the equipment, and as soon as we got this boiler proposition we asked Mr. Phelps to check it over.

Mr. WILLIAMS: It is evidence that is in writing. The witness says it was after he was here in November, and the writing is the best evidence.

The COURT: As long as he states the contents of these writings correctly we will get through a whole lot quicker if you will overlook these captious objections.

MR. WILLIAMS: This is not a captious objection.

The WITNESS: Quoting directly from the letter: (Here the witness reads a portion of the letter). That is a letter of November 25th. We mailed the three boiler proposition number 1466 to our Mr. McIntyre in our letter of December 5th. We asked Mr. Phelps to check over the boiler plan and advise us as early as possible.

The COURT: Don't testify to the contents of the letters.

Mr. WILLIAMS: The letters are already in. There is no necessity to referring to the contents of them again.

The WITNESS: That was the cause of the delay, pure and simple.

The COURT: He can't testify to the delay or the cause of it unless he refers to the contents to some extent.

(Testimony of J. W. Hubbard.)

The WITNESS: On December 5th we wrote the second letter to Mr. Phelps—that is quoted almost word for word—to check over the boiler plan and advise us as early as possible so we could place the order with the Muskegon Boiler Works. On December 9th, the third letter, we asked Mr. Phelps to confirm the order for the three boilers. On December 14th, the fourth one we again requested the information in connection with these boilers. On December 19th, the fifth letter, we requested him to give the boiler information, as he was delaying the construction of the boilers.

Mr. WILLIAMS: The statement in the letter of December 19th, that letter has no such statement at all.

Mr. WILLIAMS: To show your honor the vice of that kind of evidence, allow me to refer to the letter of December 14th.

The COURT: That will be stricken from the record, the jury will disregard it. Proceed with the examination.

A. (Continued). On December 19th we again asked Mr. Phelps to rush the boiler information.

Mr. WILLIAMS: Now——

The COURT: I will sustain the objection to that unless you refer to the letter.

Q. How did the information concerning the construction of the boilers delay the shipment of the machinery?

A. Why, they could not build the boilers without this information.

Q. And when was the information finally furnished by Mr. Phelps?

(Testimony of J. W. Hubbard.)

A. Well, as late as February 25th we wrote him requesting——

Mr. WILLIAMS: Just a minute.

Mr. McCARTHY: All right, we will get that later.

(Here Mr. Edge read into the record a letter of date January 9th, beginning: "Gentlemen: We are today in receipt of a letter from the Muskegon Boiler Works——"

Q. Well, proceed and state further details that delayed the shipment of machinery?

A. Well, a letter about January 9th—on January 9th. January 20th, I should say, in which he says he will send us information about saws in a few days.

Q. Isn't it a fact that there is a letter there—one of the things that came late was an extra conveyor, which was not ordered until—

A. Let's take this conveyor. In the letter from the Phelps Lumber Company, under date of March 30th—"The following is material needed for lath conveyor for the lath mill"—then he gives specifications of about twenty lines. "Please get this material in last car and ship at once." Now, it takes two to three weeks to get out such a conveyor after the order is received.

The WITNESS: (Continuing). That conveyor was made necessary——

Q. Now, proceed in your own way and explain to the jury how this material became necessary?

A. In all saw mills, in some of the larger ones, too, there is a hog specified. A hog is for the purpose of grinding up edgings and slabs to make fuel. The slabs that come off of the log go down to the bottom of the live

(Testimony of J. W. Hubbard.)

rolls, the tail end of the mill, and pass over what we call the idler, where it is cut off into four-foot slabs. These slabs pass into the lath mill, where the butts of the stick is taken out in the machine and made into lath, and the remainder of the timber which is not used passes into the conveyor for general refuse. It is necessary in most small mills to make extra fuel over and above sawdust, and to do this, this stuff that is left over from making lath, edgings is passed through the hog and turned into this fuel, where it goes into the conveyor and passes over drums into a steel conveyor. These conveyors are for the purpose of conveying sawdust from one part of the mill to another. This one in particular, the bigger mills, these slabs and edgings, they all go up and are dumped into this conveyor and pass along into the other, which goes over and feeds them direct into the boilers. Now then, after we were pretty well along with the contract,— I can give you the date of the letter if you want to refer to it but it will take more time—Mr. Phelps wrote us and asked us how much we would allow him if he left out the hog, using in his letter these words: The idea being that we will use a larger hog,”—the idea being that we will use, if any, a larger hog. Then we told him we would make an allowance of a certain amount if he wanted to leave out that hog, believing, as stated in his letter, that he would purchase a larger hog from us or some one else. The fact is, it is absolutely necessary to have a hog there the way the fuel was arranged, and after—oh, some little time, just before the last car was to go, the rolls were short, these things were short that

(Testimony of J. W. Hubbard.)

were taken from here, and we received a letter from the Phelps Lumber Company saying: "You have made no provision for taking care of the refuse in the lath mill——"

(The letter read into the record, beginning as follows: "In the drawing of the lath mill you have not made any provision to take care of the edgings——")

Q. Now, on what date did they cancel the order for the hog, I would like to know?

A. The hog was the provision made in the original drawing for taking care of these edgings. They were to pass through the hog and ground up for fuel. He says: "In the drawing for the lath room you have not made any provision for taking care of the edgings." We did make provision for taking care of the edgings as shown in the drawing. And the hog through which these edgings were to be passed is in the specifications, specifies a hog for grinding up these edgings to make fuel. But apparently this man did not realize when he cancelled the order for the hog—and when he said he was going to buy another hog we always believed——

A. (Continued). We specified a hog to take care of these edgings, and specified it in the plans and sold it to the M. A. Phelps Lumber Company, and they afterwards cancelled it and told us that they might put in a larger one. That is the provision for taking care of the edgings, although with this hog left out in accordance with their instructions, the edgings would naturally be thrown down through the same opening and, of course, would pass on through these different conveyors and over

(Testimony of J. W. Hubbard.)

into the boilers. Now, when they cancelled the order for the hog, they should have known from experience——

A. (Continuing). Well, the edgings then would pass on over to the boiler, where they couldn't get through these openings that are made to take sawdust and chips. Then we received this letter that no provision had been made. Then we wrote back and told him——

Mr. McCARTHY: Can you find the Phelps Lumber Company's letter of January 25th?

A. There is a letter from the Phelps Lumber Company asking us what allowance we would make for cancelling the hog.

Mr. WILLIAMS: I can read it to the Court.

(Letter of January 19th read in evidence).

A. (Continuing). Then the Phelps Lumber Company—that letter should show us what we told them, and I think that it will. Anyway, that provision made for taking care of these edgings was to grind them up in the hog. Then under what date was this order received for this conveyor? It was not until March 30th that they decided what arrangement they would make for taking care of this refuse, after they had taken out this hog, which was the original arrangement made according to the plans and specifications made for it. Then on this date they wrote us what arrangement had been made for taking care of the edgings on account of not using this hog. This is a matter they asked us to take care of, the refuse, which is not shown in the plans and specifi-

(Testimony of J. W. Hubbard.)

cations in any way. They also ordered, as those telegrams will show there, a little extra chain.

A. (Continued). Well, here is a letter under date of January 16th, regarding power for filing room. We had suggested it be built to have a small engine rather than shafting and belts.

Q. Had an engine put in instead of some transmission machinery, I believe, in the filing room?

A. Machinery.

Q. Now, let me ask you in connection with that letter, Mr. Hubbard, the filing room is a room specified for the filing of saws, is it not?

A. Yes. And as this mill was originally planned and as covered by the specifications of November 12th, the machines in that filing room were to be driven by a pulley.

Q. In the filing room?

A. Yes.

Q. Was this arrangement changed in the filing room from a pulley off the main shaft to a pulley in the filing room machine to an engine?

A. To an engine on this floor.

Q. Had the Phelps Lumber Company requested you to put an engine up there?

A. Another engine over the one that is specified.

Q. And, Mr. Hubbard, this item, did this not require the drawing of special plans for that, the engine?

Q. Mr. Hubbard, state what action you took, if any, upon that letter?

(Testimony of J. W. Hubbard.)

A. We entered into negotiations with the maker of the engine and purchased an engine and shipped it.

Q. Did you or did you not draw plans and submit them to the Phelps Lumber Company showing the arrangement of that engine in the filing room?

A. I believe these drawings were made afterwards. The date will show. Here is a letter under date of February 3rd. These are a sufficient number of steel nuts for the log chain to cover the additional length of the chain required.

Q. And did you furnish two more chains not covered by the specifications of November 12?

A. Yes, we did.

Q. And what was the additional length of chain referred to therein?

A. Seventy-five feet.

Q. That was ordered after the 12th—that additional chain was not specified in the specifications of November 12th?

A. No, it would be additional.

Q. And when was that letter dated, you say?

A. This one here specifies the conditions; this is February 3rd. These castings we had to get from the steel foundry; have to be made up specially after they are ordered. Received a letter from Mr. Bond under date of February 14th in regard to the steam openings for boiler. (Reading letter of date February 14th). From the Phelps Lumber Company of February 19th. (Reading letter of February 19th). That was our information. The boiler could not be reset until after this information



(Testimony of J. W. Hubbard.)

was received, and it came in a letter under date of February 19th.

A. (Continued). On February 25th, we received a letter from them saying that: "We will advise you in regard to the boiler feed conveyor, but we feel sure that the drawing which you submit will be all right." That is as late as February 25th. In the matter of furnishing—February 25th—in the matter of furnishing steam and water pipe and fittings: "Please advise us by return mail what arrangements you have made or will make in regard to taking measurements and furnishing these, as we do not wish to be delayed a day when the boilers are set and we get at this work." Where is my reply to that letter? Very likely about February 28th: "Referring to the postscript on your letter of the 28th——" This is our letter of the 28th to the Phelps Lumber Company. (Reading the letter).

The WITNESS: These I am picking out to show as early as February 28th, we made the arrangements for taking care of the steam piping——

The WITNESS: Under date of March 16, the list of machinery still lacking.

(Here a portion of the letter referred to was read by the witness).

Q. Now, Mr. Hubbard, the burner conveyor is the device that takes the refuse and slabs away from the mill and throws them out?

A. To be burned up, yes.

Q. Well, was that chain in addition to the chain that

(Testimony of J. W. Hubbard.)

is covered by the order and contained in the specifications?

A. It is. The burner was located when the drawings were made and signed by Mr. Phelps and myself, showing the amount of chain that would be required to go out to where this burner was located.

Q. Did Mr. Phelps write to you concerning the reason for making a longer conveyor?

A. No.

Q. Was there, or was there not some correspondence with reference to fire risk or danger?

A. He changed the original conveyor out of the mill, threw it down into the river and afterwards put it back the way the drawings originally showed it. I don't know why he did that. This letter also orders seventy-five feet of log hauling chain, together with steel dogs for chain, on March 16th.

The COURT: Would these chains ordered, and so forth, delay the performance of the contract?

A. We had them get made up before we could ship the last car; they are all special.

The COURT: There were directions to send something by the last car.

Mr. McCARTHY: I think the witness can get along better if permitted to state in his own way.

The WITNESS: In this letter of March 16th the Phelps Lumber Company say: "The plan for the filing room will be satisfactory." That is their approval of one plan at that time.

(Testimony of J. W. Hubbard.)

(Here the witness starts to read the letter in question).

The COURT: This witness is reading the letter instead of testifying.

The WITNESS: These are the extras I am pointing out that caused the delay. Here is a letter of March 22nd and we stated in a former letter there was no conveyor for the lath room.

Q. Mr. Hubbard, what date is that letter?

A. March 22nd.

Q. And was there a conveyor provided for the lath room?

A. There is, by passing this refuse through the hog, and that conveyor was furnished. It was furnished at that time.

Q. Is that extra conveyor the one that is covered by this letter?

A. This letter, yes.

Q. Then after receiving this first letter stating that there was no conveyor for the lath room, next on March 30th you received this letter?

A. Giving us the specifications of this conveyor. "Please get this matter in last car and ship at once." That is the extra conveyor made necessary by leaving out the hog, which was done by them.

Mr. WILLIAMS: What is the date of that letter?

Mr. McCARTHY: March 30th.

Mr. WILLIAMS: Fifteen days after they were in default.

(Testimony of J. W. Hubbard.)

Mr. McCARTHY: Q. Now, Mr. Hubbard, can you state approximately the date on which you received information upon which the boiler room plans could be drawn?

A. See our letter of February 25th.

Q. That was the date on which you received the approved plans from Mr. Phelps or the information upon which they were drawn?

A. Well, on February 25th we again requested the information or approval of the boiler plans.

Q. Now, Mr. Hubbard, if no alterations had been made in the specifications and the machinery ordered on November 12th and the information which became necessary thereafter had been furnished promptly as you requested it, when could you have completed the delivery of the machinery?

A. In ninety days.

Q. You have heard it in testimony here that among a great number of items claimed not to be delivered and which are covered by the specifications, is a device known as the centering mandrel.

A. Yes.

Q. You may state whether that can be found in the specifications?

A. Not in detail, but it is a part of one of the machines; it is a small part of one of the machines which is not covered or sold as a separate thing. It is like a bolt or a nut, or any other part.

Q. What I mean in the specifications, is it covered as

(Testimony of J. W. Hubbard.)

delivered by you in this contract of November 12th, these specifications?

A. Let me see the specifications. One was to have been included. Whether it is this one or not I do not know, but there would be one on that machine; should be one on that machine.

The COURT: Was there more than one furnished, do you know?

Mr. WILLIAMS: I can't say. I only investigated as to what was lacking.

The WITNESS: Well, you couldn't tell from the letter.

The COURT: Is that one of the things you claim was lacking?

Mr. WILLIAMS: Centering mandrel; that we had to purchase.

Mr. McCARTHY: Q. Was it delivered in the machinery; was it or not?

The WITNESS: This is a machine which we did not manufacture, and which we sent out and purchased for the Phelps Lumber Company.

The COURT: Q. Do you know whether it was delivered or not?

A. I don't know positively. It was small piece on the same machine; it was a very small piece on the same machine. I should imagine it was not larger than a cup; about that size.

Mr. McCARTHY: Q. Now, when next, after November 12th, 1910, did you again make a trip to Spokane?

(Testimony of J. W. Hubbard.)

A. In July last year, I believe it was; last July, about the latter part of last July or the 1st of August, I believe.

Q. Prior to your coming here had efforts been made to procure a settlement with Mr. Phelps? When you arrived in Spokane, and prior to entering into any negotiations for settlement, did or did not Mr. Phelps hand you a statement of the account between the McDonough Manufacturing Company and the Phelps Lumber Company as figured up by him?

A. He did.

Q. Have you that statement with you?

A. I have.

Q. I will now offer that statement in evidence as an admission by the defendant. The statement is dated July 22nd, 1911.

EXAMINATION ON VOIR DIRE.

By Mr. WILLIAMS:

Q. Wasn't there another sheet to this?

A. There was not.

Q. Never saw another sheet?

A. I never saw another sheet. There was two sheets to it.

The COURT: The statement will be received.

The statement admitted in evidence was marked PLAINTIFF'S EXHIBIT 121, which was read into the record.

Mr. McCARTHY: Who made this statement?

A. Mr. Phelps.

Q. Did he say anything to you at the time as to his

(Testimony of J. W. Hubbard.)

being damaged on account of the buying of his logs or lumber?

A. He did not.

Q. Did he say anything at that time of any other item of any nature which he claimed against your company?

A. He did not.

Q. What, if any, information did you have as to the sawing season for lumber?

A. Well, I didn't have—you mean as to the length of time they can cut lumber during the year?

Q. Yes.

A. Why, some mills run the year round and others run part of the year, I guess. I don't know as there is any definite sawing season, I don't know. There are some mills that run the year around.

Q. Now, you have heard the testimony of Mr. Bond and Mr. Phelps concerning the amount of iron, sheet iron and bar iron necessary on the conveyors and other parts of the mill, have you not?

A. I have.

Q. Are you familiar or have you made a calculation, estimated the amount of iron necessary on the conveyors in that mill?

A. Yes, sir; I have.

Q. Have you that with you?

A. It is not quite completed yet. I have it very nearly completed. As to the piping, but not as to the item of dollars and cents. We have the number of feet of iron.

(Testimony of J. W. Hubbard.)

Q. All right, have you the number of feet of iron necessary on the conveyer?

A. I don't know whether I have that statement or not. That statement is not quite complete.

Q. Have you the number of feet of piping calculated, what was necessary for the steam fitting, and so forth?

A. Yes, sir; that is one of the white sheets back there; that drawing is.

Q. Using the sheet to refresh your memory, you may state the amount that was necessary.

A. Well, the contract calls for piping from the boiler to the main engine; the engine set thirty-seven feet from the center of the steam drum, the center of the engine; and there would be a drop down there of about sixteen feet from the pipe down to the engine. The contract calls for the steam piping from this steam drum to the steam feed.

Q. Just state generally what amount in feet, what you have found necessary?

A. 68 feet 7 inch pipe; 133 feet 5 inch pipe; 80 feet of 6 inch pipe; 25 feet of 2 inch pipe; 20 feet of 3 inch pipe; 68 feet of 1½ inch pipe; 65 feet of 1¼ inch pipe; 110 feet of 4 inch pipe; 185 feet of 1 inch pipe; 880 feet of ¾ inch pipe; 50 feet of ½ inch pipe; 60 feet of ⅜ inch pipe; 50 feet of ¼ inch pipe; 275 feet of 1 inch pipe. Then, the fittings that go with them. There is considerable detail in that. No use reading over the number of fittings.

Q. Are you ready to state what the value of that piping is?



(Testimony of J. W. Hubbard.)

A. Yes, I have figured \$400 and—

Q. How long have you had experience in and about Spokane selling piping?

A. Well, we have been in the city about two years previous.

Q. The last three years?

A. Yes.

Q. Your experience commenced five years ago in this territory?

A. Although I have bought considerable piping at home, we don't use very much piping out here.

Q. Your experience as to buying it has been in Eau Claire, Wisconsin?

A. Yes.

Q. And you have shipped it out here?

A. Yes.

Q. And you say you were in this territory as agent for two years?

A. About two years.

Q. Prior to your becoming President of the Company?

A. Yes.

Q. Since which time you have resided in Eau Claire, Wisconsin?

A. Yes.

Q. Made your headquarters in Spokane most of the time?

A. I was here most of the time; I traveled out of here.

(Testimony of J. W. Hubbard.)

Q. And while you were here you had frequent occasions to secure prices on piping?

A. Not very much.

Q. But you have had some have you?

A. The piping is all figured from catalogue and the discount list. There is a standard price of piping all over the country.

Q. You may state generally what the price of that piping at Spokane is.

THE COURT: Do you know the cost of this piping at the City of Spokane or did you not know it at the time?

A. Yes.

MR. McCARTHY: Q. Approximately.

A. The selling price was slightly cheaper than it is now.

Q. It was slightly less than now?

A. Yes.

Q. Well, what was the price at that time, the reasonable value of this piping?

A. The discount of piping varies considerable. Some piping is discounted at 60 per cent.

Q. Well, now just state generally.

THE COURT: State what the selling price was?

A. Well, from 50 to 80 per cent off of the list.

Q. That is not what is required. What is wanted is an estimate of the actual money value of this much pipe?

A. \$445.27.

THE COURT: Q. Is that what you can buy it for in the City of Spokane?

(Testimony of J. W. Hubbard.)

A. Yes, sir.

MR. McCARTHY: Q. Have you calculated as to amount of bar iron necessary for the conveyers?

A. I have calculated the number of feet.

Q. Just as to the number of feet?

A. Yes, sir.

Q. But you have not determined the price?

A. Not in money value.

Q. You may state the amount necessary.

A. I haven't got that sheet with me because it is not quite finished.

Q. The bar iron is 340 lineal feet of one kind?

A. And 60 feet of another.

Q. 1402 lineal feet all told?

A. Yes, sir.

Q. Mr. Hubbard, you heard the testimony of Mr. Phelps to the effect that he desired a contract which would furnish all the material for the mill except nails and spikes?

A. Yes, sir; I heard him say that.

Q. He did make that proposal to you, did he?

A. No, he talked of that. I heard him say these words before, heard him use those words before, but not until order was given.

Q. And did you refuse to take the order—

Q. Now, at the time that Mr. Phelps handed you that statement did he say anything about part of the machinery not being furnished at all that is therein stated?

A. No.

(Testimony of J. W. Hubbard.)

Q. Have you a list with you of the machinery which you furnished in addition to this described in the specifications, which were a part of the contract of November 12th?

A. Yes, I have.

Q. In the statement of Mr. John R. Bond which has been introduced here, referring to the first item, I will ask you if that item is included in the specifications of November 12th—well, I might ask the witness generally if there are any items included in that statement other than the amount of piping and sheet iron which you have described, which items were included in the specifications of November 12th?

A. Here is one for \$12 in this first statement.

Q. What is that?

A. A lever for—shot gun speed lever conveyer. I don't know definitely just what he meant by that. I passed it over rather than argue it though. And this connection for nigger lever \$8. Those are the only two on that sheet. This is the sheet iron which we have allowed, settled for, steam gage twenty-five cents.

MR. WILLIAMS: Is that Bond's statement?

THE WITNESS: No, we have passed Bond's statement, page 4. 1 injector, \$27.

THE COURT: Q. What are you saying about it?

A. We allowed it.

MR. McCARTHY: Q. That is, it was included in these specifications?

A. Yes, sir; the specifications could be construed that way. 1 6 inch expansion joint, \$18.

(Testimony of J. W. Hubbard.)

Q. Was that joint one that you would make in estimating the amount of piping necessary.

A. No. I found it here and I didn't stop to figure it. It is a small thing.

Q. Was it used in that connection?

A. Yes.

Q. Part of the piping?

A. Part of the piping, yes, sir. Here is an item \$8.50 and 6½ inch 744 air cocks, 81 cents; 2¼ inch No. 700 pet cock, 27 cents. The first item of 141 is Mr. Williams' statement.

Q. That is sheet metal which you have already described?

A. Bar stock.

Q. As being willing to have charges against the job?

A. Yes, which we authorized him to buy. Dalkena Lumber Company invoice of \$1.50 part freight.

Q. You may state what that item concerns.

A. That is some portion of the freight on foundation bolts that was put in one of the Dalkena Lumber Company's cars. We were shipping a bill to them at the same time.

Q. State what quantity of bolts were covered in that invoice?

A. A couple of orders, one other item is allowed, of \$32.10.

Q. Now, other than the items you have mentioned there are none of that list which you have gone over which are included within the specifications of November 12th over than as stated by you?

(Testimony of J. W. Hubbard.)

A. There is some piping in there which is covered by this statement. Aside from these items that are checked there there is nothing in it.

Q. Well, you have heard the testimony of the witness Bond, something as to the amount of bolts necessary to install the machinery in this mill, haven't you?

A. Yes.

Q. What concerning the bolts to attach to the timbers in the mill, if any, were furnished by you?

A. Not any, that is not machinery.

#### CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. When did you first agree with Mr. Phelps about the furnishing of the three boilers?

A. The two boilers?

Q. Furnishing of the three boilers?

A. Three boilers?

Q. Yes, sir.

A. In January some time.

Q. Didn't you agree with him when you were here in November?

A. No, I did not.

Q. Had no agreement at all about the three boilers then?

A. No agreement at all about the three boilers.

Q. Knew nothing about the third boiler on that date?

A. I did know about the third boiler, yes, sir.

Q. Isn't it a fact that you had the specifications for the three boilers as early as November 23rd?

(Testimony of J. W. Hubbard.)

A. That we had them?

Q. Yes, sir.

A. No, we did not.

Q. Isn't it a fact that you had specifications from the Muskegon Boiler Works for that three boiler installation as early as November 23rd.

A. I believe not.

Q. Look at this document that your counsel has marked for identification. Did you bring this into court with you?

A. Yes, that is one of ours.

Q. You brought that to Spokane with you for this trial, did you not?

A. No, I did not.

Q. Well, when did you first see it?

A. Well, soon after November 23rd likely.

Q. Soon after November 23rd. Did this document come into your possession at that time?

A. No.

Q. Did you see it at that time?

A. Not on November 23rd, no.

Q. Who was it called for specifications for this third boiler?

A. Mr. Phelps.

Q. Who on behalf of your company?

A. I believe I did, but the other clerks may have.

Q. When you got the specification, did you see it?

A. I believe I did, yes.

Q. Now isn't it a fact that you got the specifications

(Testimony of J. W. Hubbard.)

for this three boiler installation for the Phelps Lumber Company under date of November 23rd?

A. Under date of November 23rd, no; we didn't have that on November 23rd. They were mailed from Muskegon, Michigan.

Q. On November 23rd?

A. Yes.

Q. It is only a day between there and Eau Claire, by passenger train, by mail?

A. Two days is about as good as you can do.

Q. Then you got that as early as November 25th?

A. About the 25th, I believe.

The document admitted in evidence was marked DEFENDANT'S EXHIBIT 122.

Q. You are acquainted with the signature on behalf of the boiler works?

A. Yes, in a general way.

Q. Are you acquainted with Mr. Ashley's signature?

A. If it was off of that paper I couldn't identify it.

Q. Didn't you testify the other day that you had never seen Mr. Ashley's signature on any document?

A. I did not.

Q. Didn't you, when you were first put on the stand for the purpose of identifying certain Muskegon letters, didn't you say you never had any correspondence with Mr. Ashley, never saw his signature?

A. I did not.

Q. What was your reasons for calling for specifications for a three boiler installation if you didn't have any contract for three boilers?



(Testimony of J. W. Hubbard.)

A. Mr. Phelps asked me to get it for him.

Q. Well then, you knew when you were here in November that there possibly would be the third boiler?

A. I did not, I had no order for it.

Q. I understand, but you understood there possibly would be the third boiler?

A. It was undecided between three and four boilers at that time.

Q. You knew that it would be either three or four?

A. Yes—no, I didn't know that it would be; it might not. He asked me to get him the propositions, what will another boiler cost us; will you give us a proposition on it. And I did get it.

Q. Isn't it a fact that the four boiler proposition was abandoned before November 12th and the three boiler was taken up at that time?

A. It was just a statement that he believed he would switch from four boilers back to three, but he never placed his order.

Q. Now, you say Mr. Phelps told you this timber was all standing, not burnt over?

A. He told me it was not burnt over.

Q. You did discuss his timber, didn't you?

A. That was after we got back down here. It was not at Cusick and it was not about the cutting of it then that we discussed it. Mr. Phelps said that he was lucky in that his timber was not burned as others were burned, and as a consequence they would have to cut their timber and he might not want to cut his for some little time, he could hold his and not start up sawing.

(Testimony of J. W. Hubbard.)

Q. When was it that you discussed this timber with him?

A. That was about September 15th.

Q. What was your occasion for discussing the timber with him

A. Merely discussing the forest fires in a general way and the time this machinery was to be delivered.

Q. He did discuss something about the machinery, his necessities for the machinery, didn't he?

A. He told me because the timber was not burned he would be in no hurry about cutting it.

Q. And it wouldn't make any difference what time you delivered it to him in 1911?

A. It didn't make any difference.

Q. Did he tell you that?

A. He didn't use those words, but that is what I gathered, didn't make any difference when I delivered it. No, I didn't have that impression, not when I got the order.

Q. You understood it didn't make any difference at that time?

A, No, I did not.

Q. You did not understand it would make any difference whether before or after?

A. I did not know it would make any difference.

Q. You did know then at that time that delivery was an important item with mills?

A. It is not.

Q. It is not?

A. No.

(Testimony of J. W. Hubbard.)

Q. You knew that it didn't make any difference what time you delivered in 1911; is that right?

A. I say yes, it did make a difference.

Q. It did make a difference then?

A. Yes, after the contract was signed.

Q. But you didn't discuss anything about the amount of logs he was going to get out?

A. Not at all.

Q. You didn't know he was going to get out any logs?

A. I did not.

Q. You didn't give that any consideration?

A. The subject didn't come up at all.

Q. Now, you say that Mr. Phelps, at that time you were there, checked these items opposite the different items on the specifications. Did you see him check these?

A. Checked them two or three times.

Q. Made these pencil marks on them?

A. As to these pencil marks I didn't say definitely, but I saw Mr. Phelps check the specifications; as to whether he made these identical dots, I don't know.

Q. You don't know when these checks were made on there?

A. They were made at that time. In the first place, when we went to sign up this—may I explain it?

MR. WILLIAMS: Yes.

THE WITNESS: We had the drawings and specifications and all complete and these check marks I believe while they might have been put on since—they may

(Testimony of J. W. Hubbard.)

have been, I don't know—anyway this was checked against the drawing.

Q. Do you know whether they were put on at the time?

A. They could have been put on, certainly.

Q. I am asking you about your recollection, Mr. Hubbard. You would not remember the lead pencil marks now?

A. No.

Q. Did you ask Mr. Phelps anything about the timber then, where it was?

A. No, I did not.

Q. Ask him anything about where he was going to get his timber?

A. No, I did not.

Q. Ask him anything about the amount of timber to be obtained in that section?

A. No, sir.

Q. Didn't go into any of these things?

A. I did not.

Q. Didn't pay any attention to anything except selling the machinery?

A. Yes. I didn't pay any attention to his timber. The fact is Mr. Williams that the way this matter came up I called Mr. Phelps over the telephone on Sunday evening—

Q. You say the reason that you failed to deliver—you say that a reasonable time to get out this machinery would be 90 days. Is that right?

A. We can get people to send us the information

(Testimony of J. W. Hubbard.)

where they have a man on the job; he can send us information and in that case we can get it out in about 90 days, single band bill; we have done it.

Q. You had Mr. McIntyre on the job?

A. Here in Spokane, yes.

Q. And Mr. McIntyre, you had Mr. McIntyre—you would have Mr. McIntyre on the ground to check this over and go out to the plant, did you?

A. I did not.

Q. What was Mr. McIntyre to do on the job?

A. He was a salesman.

Q. I understand, but what had he to do with it, about closing up this deal with the Phelps Lumber Company?

A. The same as any salesman. His duty was to take the order.

Q. His duty was not to work on this order after that?

A. His duty was certainly that of a salesman.

Q. What did you do in respect to that letter from the Phelps Lumber Company urging you to send McIntyre to Cusick to get out the plans and check them over and hurry the matter up.

A. I believe he—

Q. On what occasion did you ever call for any information from Mr. Phelps or the Phelps Lumber Company that he did not furnish it?

A. That he didn't furnish it?

Q. Yes, sir.

A. He furnished I guess about all that we asked for finally, but we had to write him about three letters before

(Testimony of J. W. Hubbard.)

we could get a certain part of the information about the boiler.

Q. What is that?

A. About the boiler.

Q. What is that; what definite point about the boiler that he didn't furnish?

A. I have read the telegrams on that and you can read them over again.

Q. I understand, but I want you to say.

A. In the first place, for his boiler room plant, he was going to fill his boiler room—

Q. (Interrupting) Sent that boiler room plat at your request on January 9th, did he not?

A. I don't know the date.

Q. Isn't that a fact?

A. I believe there was one plan came in January, on the 9th. That did not include all the information; it didn't include all the necessary information.

Q. Did you write back and ask for any further information you wanted?

A. Yes.

Q. Well, when was that?

A. The openings of the steam drum.

Q. Very well. At the time you wrote for that, was that letter that you referred to to Mr. Bond about April, was it not?

A. February 3rd—or what date was it—February 3rd I believe Mr. Bond's letter was dated February 3rd.

Q. When you wrote that letter you received a prompt reply from Mr. Bond, didn't you?

(Testimony of J. W. Hubbard.)

A. Not prompt, no. We asked for that some little time before we got it.

Q. Now, you have got a document there you can refer to; you know the time you asked for it?

A. Unless I give all of these letters here.

Q. I just want you to give me the date.

A. What do you want to know about that?

Q. All I care for is some information that you say you didn't get promptly.

A. On December 9th we wrote Mr. Phelps and asked him to furnish the order for the third boiler.

Q. I wasn't asking you about that. You were saying something that you didn't get with reference to the openings in the boilers.

A. We wrote for information of the boilers—

Q. (Interrupting). I am not asking you about general information. I want to get a specific thing that you wanted and that we failed to furnish.

A. My notes don't show what was in any of these letters, so I can't tell you in answer to that particular inquiry. There is a letter here of February 25th.

Q. Very well, if you can't tell Mr. Hubbard.

A. We wrote them thirteen different letters on that subject, however.

Q. Now, if you are coming back to your thirteen letters now, state anything you asked for that was not furnished promptly, any of the items you are referring to?

A. The dates of the letters will not show that.

Q. You refer to the letter of January 20th from Phelps, but I don't find any such letter in the files.

(Testimony of J. W. Hubbard.)

A. I think it was to Phelps.

Q. I simply want to know from the witness what he is complaining about.

THE COURT: His statement is in the record.

Q. About this refuse conveyor, Mr. Hubbard, where was this refuse to be dumped after the hog was eliminated?

A. They were finally—

Q. No, I mean what would it be without the change that you were referring to.

A. They would go into the hog, right on through the hog.

Q. And if the hog wasn't there, where would it go; just drop down?

A. I don't know where it would go.

Q. Would there be any way of taking care of them?

A. Not with the hog out, no.

Q. Then the result was that by making this agreement with the Phelps Lumber Company cutting out the hog and for a deduction of \$284.00 that there was no way of taking care of this refuse; is that right?

A. There is a way according to Mr. Phelps' letter.

Q. I understand, but was there any place to carry them away?

A. By passing them through the large hog.

Q. I understand, if there was a large hog in there, but I say eliminating that.

A. As a matter of fact the hog was not eliminated.

Q. I understand, but if it was eliminated was there any way of carrying away the refuse?



(Testimony of J. W. Hubbard.)

A. If it was I don't know how they would take care of it.

Q. There is no conveyer to carry it away?

A. Yes, there is a conveyer there which would have carried edgings instead of saw dust.

Q. How does it happen that you don't make any mention in this letter of yours about some way of caring for the refuse after the elimination of the hog?

A. We didn't eliminate the hog.

Q. That is because you didn't know but what they would put in a bigger one?

A. I believed all the way through they would put in a bigger hog.

Q. The order which you received for another conveyer—

A. This is this letter of Mr. Bond's of February 13th; isn't that correct—no, it is not.

Q. Very well, what is it?

A. Letter of March 30th, I believe.

Q. Letter of March 30th?

A. Yes, I believe that is it.

Q. That is the letter in which they called your attention to what was necessary to complete the conveyer?

A. No.

Q. Is that right?

A. No, they did not. The conveyer was complete.

Q. Is that the order you got for the conveyer, of March 30th?

A. Yes, it is.

(Testimony of J. W. Hubbard.)

Q. In that letter of March 30th do you see any order for the conveyor for the lath machine.

A. Isn't their letter of March 16th written by Mr. Phelps, in which he asks us to get out connections of some kind?

Q. I want to know where you claim you got an order for the conveyor for the last machine.

A. We wrote at least three different letters to get that letter.

Q. Very well, let's see them?

A. One is in reply to the letter from Mr. Bond saying something about that conveyor; another is in reply to a letter of Phelps and about three or four days or a week or so before this particular letter that you refer to recommendation was put in—let me see that letter varying the specifications and I can tell you then.

MR. WILLIAMS: Go ahead.

A. There is a letter containing specifications of the extra machinery he would have to have in order to make up an extra car.

Q. This is the one of March 30th?

A. That is the idea, yes.

Q. Very well. Then, before that Mr. Phelps wrote us a letter here—

Q. I want to find out when you say you got the order for the conveyor?

A. I am going to find it if you will leave it here just a moment.

Q. Very well.

A. On March 16th, we received a letter—

(Testimony of J. W. Hubbard.)

A. Then there is a letter here in which they speak about the conveyor.

Q. Is that a letter of Bond's?

A. Yes, sir.

Q. That letter I think, referring to this letter of Bond's, is dated February 13th, and another from the Phelps Lumber Company of March 16th, 1911, which is in evidence, being Defendant's Exhibit 60, and this letter of March 30th, is that right?

A. There is at least that many. I received three of them.

Q. I understand. Is that what you rely upon as being the order for the conveyor?

A. That there is the order; yes, sir.

Q. This letter?

A. That other letter—is that the first letter? If you will read that again—what does it say there? The one about a week before that?

Q. (Reading) "Regarding the list of machinery still lacking, according to our account, will say—"

(Here the letter was read in full).

Q. That is what you were relying upon as the order and this letter of the 30th?

A. No, not his order, but in there he says—I think that is the last car—and he didn't tell us what he wanted.

Q. But Mr. Hubbard, I want to know what you are relying upon as the order for that conveyor, an extra conveyor?

A. The conveyor ordered in that one there (indi-

(Testimony of J. W. Hubbard.)  
cating).

Q. The letter of March 30th?

A. Yes.

Q. You never proceeded to get out this conveyer until you got this letter of March 30th?

A. No.

Q. You got that letter probably along about April 2nd or 3rd, did you?

A. Which one?

Q. The one of March 30th.

A. I suppose some two or three days later.

Q. Now Mr. Hubbard, that did not prevent you from completing that contract by March 15th?

A. That letter said that they were to furnish an extra conveyer, on March 16th, didn't it?

Q. No, sir, I think not.

A. Read the words. It gave us—I am sure that is true—but we couldn't make the conveyer without specifications; we couldn't write in for conveyer without specifications.

Q. Now, Mr. Hubbard, you spoke also of this letter of Mr. Bond's dated February 15th. You didn't understand from that that Mr. Bond was ordering a conveyer of you, did you?

A. No, we didn't.

Q. The change for lath conveyer. Didn't you expect to furnish such chain for lath conveyer?

A. We did expect to furnish the chain for the conveyer.

(Testimony of J. W. Hubbard.)

Q. Now, this chain that you claim delayed you, wasn't that furnished for the conveyor?

A. It was not furnished for the conveyor.

Q. What was it furnished for?

A. For the additional conveyor.

Q. That is was extra.

A. It must have been.

Q. You are sure of that are you?

A. I don't know anything about whether he ever used it, but he ordered an additional chain for the lath conveyor.

Q. You don't know whether they had sufficient for the conveyor?

A. I know that they had all that the drawing showed, is they placed their conveyor where the drawing showed it, they would have had plenty.

Q. Did you superintend the shipment

A. I looked after it pretty close.

Q. Were you there when it was shipped?

A. Yes, I was there when it was shipped. Very seldom a car goes out that I don't know what is in it.

Q. You checked it, did you?

A. We check all the invoices. We buy this chain from the special chain factories and we check over the invoices before we pay for them and we know there is so much chain, and that is put into the car after being O. K'd.

Q. How long did it delay you in getting this 75 feet of chain?

A. If all of those extras ordered had been received

(Testimony of J. W. Hubbard.)

at one time we probably would have got that out in about four weeks.

Q. It would have taken you four weeks to have gotten this chain?

A. No.

Q. How long did it take you to get the chain, extra?

A. About two weeks, I should say?

Q. And you think that delayed the completion of the mill, do you?

A. It delayed the car when we were instructed to hold the car back for that chain.

Q. Who told you to hold the car back for that chain?

A. That letter there says to ship it in the last car.

Q. Which letter?

A. The letter we have just read. What does it say about it? "Get this material in last car."

Q. March 30th?

A. No, March 16th.

Q. Did that tell you to hold the car any time, tell you to hold the car for it?

A. That told us to get it in the last car.

Q. Did you hold the car for it?

A. We surely would have done so.

Q. Well did you?

A. Not directly for that one piece. We held the car for a lot of extras.

Q. Didn't hold it then for that?

A. Not for this one piece.

Q. Yes, and this chain had nothing to do with the delay?

(Testimony of J. W. Hubbard.)

A. The chain did have something to do with the delay.

Q. Yet you didn't hold the car for it one day?

A. Yes, it was held for that, and might have held it for any of the others; might have been held for any one perhaps and not for any particular piece.

Q. Now, where did you get that 75 feet of extra chain?

A. I think it comes from Columbus, Ohio.

Q. You could have shipped that at any time by express out here?

A. We could, if we were not told to put it in the last car.

Q. And you instructed them to hold the car until the chain was there?

A. Certainly.

Q. Did you ever tell the Phelps Lumber Company in furnishing this chain, that you were holding their car and delaying the shipment by reason of that.

A. We wrote them a great many letters that they were delaying the shipment by delaying in getting in these orders and information.

Q. Mr. Hubbard, isn't it a fact that the very last thing that you shipped from your factory was a part of the engine?

A. I believe we shipped a part of the engine in the last car.

Q. The last shipment that went direct from Eau Claire left on April 20th, didn't it?

(Testimony of J. W. Hubbard.)

A. I could not say.

Q. About that date, wasn't it?

A. Perhaps. I think I have got it here though—no, I haven't got that; about April 20th.

Q. And in that shipment the engine was shipped; isn't that a fact?

A. Part of the engine may have been. I don't remember just what was in this car; so many items.

Q. Look at this that I hand you and state if that shows what was in the car that left there on April 20th, or April 21st?

A. Yes, that is what was supposed to be in the car; that is what was loaded in the car.

MR. WILLIAMS: I ask to admit this at this time.

Admitted in evidence without objection and marked DEFENDANT'S EXHIBIT 123.

Q. Referring to this document, is it or is it not a fact the engine was shipped in the—

A. (Interrupting) Parts of the engine were shipped in the first car; went up there in the first car, with a shipment to the Dalkena Lumber Company.

Q. That was in January?

A. Yes.

Q. Part of it was shipped in this car April 20th?

A. Yes.

Q. Did the question of these links or the chain have anything to do with your construction of the engine?

A. The fact that there was over four thousand—

Q. (Interrupting) Just answer the question.

A. The extras did, yes.



(Testimony of J. W. Hubbard.)

Q. Did the question of the links have anything to do with your delay in completing the manufacture of this engine?

A. Not directly, but the extras did.

Q. What extras are you referring to?

A. There are \$4000 worth of extras in that contract, almost a carload of extras.

Q. Did these links have anything to do with the manufacture of the engine?

A. Of the engine, no.

Q. Did this question of the conveyor for the lath machine have anything to do with the manufacture of the engine?

A. Not directly, no.

Q. There is nothing then in these extras that you claim to excuse the completion of the engine; is that right?

A. They were not necessarily a part of the engine, not these extras.

Q. So, as a matter of fact, you did not have that engine completed on April 10th, just ten days before this shipment, did you?

A. I rather think we did. The engine sat there in the shop, I think, some little time before it was shipped.

Q. You say the engine was completed some little time before that, do you?

A. Yes, sir.

Q. And before April 10th?

A. Yes.

(Testimony of J. W. Hubbard.)

Mr. WILLIAMS: I offer in evidence at this time letters of the McDonough Manufacturing Company of date April 6th and April 10th.

Admitted without objection and marked DEFENDANT'S EXHIBITS 124 and 125, and were read into the record.

Q. Now, Mr. Hubbard, referring to this last letter here that I read, was the engine or was it not complete on April 10th?

A. The engine was finished before that time, some little time before that, Mr. Williams, was in our way around there for a long time.

Q. What did you mean when you said, "The engine is practically finished"?

A. The only thing to be done with it was to assemble it, which we couldn't do in the shop until the last car of machinery was ready, and we didn't want to assemble it and have it in our way until these extras were removed. It would take up our whole shop.

Q. When you speak of "practically ready," you mean practically assembled?

A. It was to have been assembled.

Q. Now, as a matter of fact these links of chain were shipped in the boiler car, were they not?

A. Yes. But not this other chain they are speaking about.

Q. Now, Mr. Hubbard, did I understand you to say yesterday that you can recognize Mr. Ashley's signature, of the Muskegon Boiler Works?

A. I would know it only—no, I wouldnt' know his

(Testimony of J. W. Hubbard.)

signature on a bank piece of paper. I would know their stationery, that they use.

Q. Well, you have had correspondence with Mr. Ashley?

A. I have had correspondence with Mr. Ashley.

Q. Look at this letter that I hand you and state whether you know that that is Mr. Ashley's signature?

A. No, I don't know; I would not identify the signature. It is their stationery.

Q. Look at that letter and state whether or not you received a copy of it from Muskegon Boiler Works?

A. No, we didn't receive a carbon copy; not when it was written, anyway.

Q. Are any of the officers of Muskegon Boiler Works here?

A. Not that I know of, no.

Q. Now, about this statement that you say Mr. Phelps furnished you in July. Mr. Libby, the book-keeper, got that off for you?

A. I don't know. Mr. Phelps handed it to me.

Q. In his office?

A. Yes, sir.

Q. Mr. Joseph F. Sexton was present at that time, wasn't he?

A. As to that I can't say.

Q. You know Mr. Sexton?

A. Yes.

Q. You know he is a member of the Phelps Lumber Company?

A. I don't know directly that he is.

(Testimony of J. W. Hubbard.)

Q. Isn't it a fact, Mr. Hubbard, that what happened there was you asked Mr. Phelps to give you a copy of what appeared on his books and he gave you this statement in response to that?

A. No, I didn't ask him for a statement. We had our statement of what we had furnished and what was due us.

Q. Didn't you ask him to furnish a statement as it appeared on his books?

A. Well, I might have asked such a question, but I don't recall it.

Q. Didn't he give you this statement as a statement of what appeared on his books?

A. I didn't ask in those words. What we were talking about then was the balance due us.

Q. Yes, sir. But don't you know——

A. (Interrupting) What I was interested in was the amount of the balance due us.

Q. Don't you know when that was given to you that it simply showed the bills of materials that you had actually furnished and a credit of the payments that they had made, without any reference with anything that you had failed to furnish or any damage that they had suffered?

A. I didn't know because it showed what they claimed that we should have furnished.

Q. Showed what?

A. What they claimed we should have furnished.

Q. Does it show anything about this conveyor iron which they were claiming never was put in?

(Testimony of J. W. Hubbard.)

A. Yes, it does.

Q. Where, Mr. Hubbard?

A. Let me see the statement.

Q. I mean this conveyor of iron that never has been installed in the mill?

Q. Have you that statement there?

Q. I am referring now to the stuff that never was installed in the mill at all.

A. There was nothing said about any stuff not being installed in the mill. Mr. Phelps told me this was the stuff that we were obliged to—had to furnish to the mill. Part of it they was to furnish and part we were to furnish.

Q. You know that it did not refer to these conveyor irons that is spoken of in this letter of the 6th of April and the letter of the 10th of April, in which you said you could not furnish.

A. We furnished all of the material called in that letter, Mr. Williams.

Q. Isn't it a fact that in the conversation in Mr. Phelps' office in the presence of Mr. Sexton the question of damages that has been sustained by the Phelps Lumber Company by reason of your default and the fact that there were certain parts that were not in the mill then, even then, the conveyor iron was discussed?

A. No, it was not mentioned at that time.

Q. It was not mentioned at that time?

A. No, not at that time. Later it was.

Q. Was it discussed when you were here?

(Testimony of J. W. Hubbard.)

A. Several days after he made me this statement he brought up the question of damages for delay.

Q. It was not discussed in the presence of Mr. Sexton?

A. It was not discussed at the time he handed me the statement.

Q. Was it discussed in the presence of Mr. Sexton?

A. Mr. Sexton may have been there a couple of days later, but at the time he handed me the statement nothing was said about delay in any way, shape or manner.

Q. Now, I direct your attention also, Mr. Hubbard, to the Defendant's Exhibit 21, being a letter of date Nov. 21, 1910, wherein it says: "November 21, 1910. Everything pertaining to the engine is now out with the exception of the bed." Was that or was that not a fact?

A. Read the rest of it now.

Q. Where it says: "This being the only part that is made right hand or left hand"?

A. Yes, we were waiting for that information.

Q. Answer my question. Had everything of the engine out except the bed on November 21.

A. The castings were all made, I believe, at that time.

Q. Was everything out of that engine at that time except the bed?

A. The castings were out. That is what was referred to, the material was out for it.

Q. In using the word "everything" you are referring to the main castings only?

(Testimony of J. W. Hubbard.)

A. I am referring to the whole material, but not to labor, when I say that.

Q. And I refer to your letter of December 5th, 1910, where you used this language: "We also have a good deal of the engine cast and part of the machine work done, so it is possible we will make this the second car."

A. Yes.

Q. Was that correct?

A. What was the question direct?

Q. Whether or not you had a great deal of the engine cast and part of the machine work done so that you would be able to make that the second car?

A. What was the date of this letter as compared with that there?

Q. The first one is November 21, 1910. The second one is December 5th.

A. Yes, then we evidently had everything cast except this bed, which we were waiting for, the hand of.

Q. It was on December 5th or 6th when you received the letter from the Phelps Lumber Company stating that: "If you don't hear from us to the contrary within a day or so, that the engine would be—" left hand or right hand?

A. Right hand. I don't know the date of the letter, but we received a letter from Mr. Phelps saying if I didn't hear from him further within a reasonable time or a few days—

Q. (Interrupting) Within two days, wasn't it?

A. I don't remember.

(Testimony of J. W. Hubbard.)

Q. Now, Mr. Hubbard, you say that there was this number of feet of pipe necessary in setting up this machinery, the item that you gave your attorney yesterday?

A. That amount of pipe was more than necessary, Mr. Williams.

Q. More than necessary?

A. More than necessary, yes.

Q. How do you get your figures?

A. From the plans, from the way the mill was built, and from having been down there twice and looked at the mill afterwards to examine it.

Q. When did you go down and look it over?

A. After it was running.

Q. Did you at that time make your figures as to the amount of iron?

A. Not at that time, no.

Q. When did you make your figures?

A. I made part of them before I came out here and part of them since I got here.

Q. That is, just shortly before the trial?

A. Yes.

Q. And part of them since you have been here; you figured it out at the hotel?

A. I figured out the money values since I have been here, from the Spokane statement, I figured out the feet—no, I didn't figure all the feet since I have been here.

Q. Why didn't you figure these out in the Spring of 1911, when the Phelps Lumber Company wanted you to send on the pipe?



(Testimony of J. W. Hubbard.)

A. Because I couldn't tell the exact number of feet required, but I have allowed more than sufficient, I am sure. You know, in fitting in pipe if they are a quarter of an inch too short or one-tenth of an inch too short the steam is going to leak through them; and if they are too long they won't connect at all. It is absolutely necessary that they be that length and you can't show that in the plans.

Q. You can't figure it any better than you could figure it in the month of April, on the 11th?

A. Not within a quarter of an inch or so, not close enough to work by, but I can figure it up close enough to show the number of feet to be used.

Q. Do you mean to say that none of these valves that appear in this list, that were purchased by the Phelps Lumber Company, were necessary?

A. I have included all the valves necessary in my statement.

Q. You only refer to the pipe?

A. My statement said—no use reading over all these figures, valves and elbows and couplings and joints and reducers and all such items as that in my list.

Q. You only gave a list of \$445 for the pipe?

A. That included all the fittings, as I said yesterday.

Q. Now, you were asked by your attorney yesterday to give these pieces of pipes, and you gave a long list, 64 feet of  $\frac{7}{8}$ , 135 feet of 5 inch—and so forth. Then, you were asked to value and you said the value in Spokane was \$445.00?

(Testimony of J. W. Hubbard.)

A. And that piping included the fittings, I said.

Q. You included the fittings in that?

A. Yes.

Q. What was the value of the pipe, if you know?

A. The pipe alone I have not figured separate.

Q. You just estimate it, do you?

A. Unless the contract calls for piping, valves——

Q. I am not asking you about the contract. The contract is in evidence.

A. I didn't estimate it, no, but if you will take down the figures I will tell you amount of the pipe. I have got it figured separate.

Q. How many valves did you include?

A. Twenty-six.

Q. How many bushings—if you can't answer without computation——

A. I will have to count them all through.

Q. Can you, without making a computation, tell how many elbows or joints?

A. No, I can't tell offhand; I can't tell you that.

Q. How much sheet steel or sheet iron?

A. Sheet iron is not included in the piping, not part of the piping. You want that separate from the piping?

Q. Yes.

A. What is the question as to that sheet iron?

(Question read.)

A. 640 feet.

Q. You say these items in Mr. Bond's statement are not included with the specifications?

A. Yes.

(Testimony of J. W. Hubbard.)

Q. Do you mean to say that the U bolts were not necessary in the completing of that mill?

A. I mean to say that U bolts have nothing to do whatever with the machinery we were furnishing.

Q. I say was it necessary to complete that mill, complete the machinery?

A. No, not to complete the machinery.

Q. Not necessary to install the machinery?

A. Not necessary to install the machinery.

Q. The iron bale?

A. That was not necessary to install the machinery, but to install the wooden tightener frames which carry the machinery.

Q. These U bolts are the things that hold the machinery in place, are they not?

A. The machinery is held in place by boxes which we shipped out here, and bolts which we shipped out here by which it was fastened to the wooden works.

Q. The tightener rods has nothing to do with iron?

A. No.

Q. These bolts for the bridging that you refer to, that has been so much talked about here, amount on that statement to \$7.43, dont' they?

A. I don't know.

Q. Were flange unions necessary to complete that mill?

A. Yes, and I have included them.

Q. T's?

A. T's I have included.

Q. Air cocks?

(Testimony of J. W. Hubbard.)

A. The air cocks we have furnished.

Q. Boxes?

A. What do you mean by boxes now?

Q. Boxes to carry the rollers and——

A. (Interrupting) I understand what you mean.

No, I did not.

Q. Shafts?

A. Yes, they were shipped from Eau Claire.

Q. Isn't it a fact, also, that this conversation that you had with Mr. Phelps in the presence of Mr. Sexton, that in going over this list you complained and you said you didn't think it should exceed—the cost of them should exceed eleven or twelve hundred dollars; the question of pipes and valves?

A. Pipes and valves, and other items, and bar stock.

Q. And that is what you stated at that time?

A. What is the way I stated?

Q. That eleven or twelve hundred dollars was about the amount necessary for that work?

A. Yes, would cover all the stuff that is included in that statement.

Q. Now, you think it would be \$443, do you?

A. I do not.

Q. Isn't that what you said yesterday.

A. I didn't. I said that \$443 was the cost of piping itself. I said that this \$900 or a large amount of same would include all the bar stock, sheet iron and piping and material which had to be purchased and fitted into the mill as it was being built, all the material that was

(Testimony of J. W. Hubbard.)

not shipped in the cars that was purchased here in Spokane, which we instructed them to purchase.

Q. What does that \$445 mean now, with reference to this matter?

A. The piping and fittings included the valves and finishings and the rest of those things.

Q. What is the rest of this eleven or twelve hundred dollars?

A. That is bar stock and sheet iron. I believe it is all included as bar stock and sheet iron.

Q. It is some of the items that is included in that statement here?

The COURT: He checked the ones I believe he said were included.

Mr. WILLIAMS: And those checked here only include about \$75 or \$100.

The COURT: He said that was all.

A. There is nine hundred dollars' worth of this material within that statement. That statement covers twenty-four hundred dollars' worth of material all told, but there is only nine hundred dollars of that material. I can't tell the exact figures. If I said twelve hundred, then I said twelve hundred would cover all the material in that bill there that is to go into the consumption of the mill according to the contract. The other was used other places.

Q. Now, as I understand, Mr. Hubbard, your testimony now is that in this itemized list here there is about twelve or thirteen hundred dollars that you should pay; is that right?

(Testimony of J. W. Hubbard.)

A. Yes; that we authorized them to purchase, but they should have purchased from here.

Q. And that \$445 is a part of that.

A. Yes.

#### REDIRECT EXAMINATION.

By Mr. McCARTHY: Q. Mr. Hubbard, this \$75 item approximately, to which Mr. Williams referred, these are items which might not have been delivered for which he makes claim in addition to the bar stock and piping and pipe fittings?

A. This \$75.

Q. I think you checked yesterday a few other items that you might be, under the contract, required to furnish which you are willing to allow. Is this \$75 in addition?

A. They are items which I have checked on here because I didn't transfer them over into this detailed list which I have read. But this is gross, including these items of \$940—I believe I have it here; I have taken—I have made up here a list of all the pipings, fittings, couplings and elbows and so forth necessary.

The COURT: He wants to know whether this includes or excludes the ones you checked off on the other statement; can't you answer that question direct?

(Question read.)

A. Well, I don't know the exact amount of iron, but these items I have checked in blue are items we authorized them to purchase from here.

Q. At the time that this statement was handed you

(Testimony of J. W. Hubbard.)

were these notes in existence upon which this suit is brought?

A. Yes, they were.

Q. Did Mr. Phelps at that time disclaim any liability on the note?

A. No.

Q. Were you claiming there was an amount due above the note?

A. Yes.

Q. What was the purpose of the statement?

A. To show balance due him over and above these notes, on the contract.

Q. What if any claims other than the amounts on this statement were ever stated by Mr. Phelps as items of damage and state when these statements were made?

A. There was nothing said about any items outside of those shown on that statement, and we were discussing the statement at that time. Later on Mr. Phelps said something about damage.

Q. Had you calculated the statement for a number of days upon the basis as submitted by him and produced here in evidence before he made a statement or claim for damages other than the items mentioned in this \$2400 statement, approximately.

Q. State fully the circumstances of Mr. Phelps first making claims for damages other than the amount stated in his statement which was handed to you?

A. Well, when we took up the statement here it was after we had made the statement that we submitted Mr. Phelps, that didn't agree with our statement, and we

(Testimony of J. W. Hubbard.)

made up one of his own which he handed me and which, as I explained, it was to include the counter charge he had. We took this statement and went through it item for item and checked some items that I assumed were those that we had authorized him to buy out here, and checked over others that we had furnished from Eau Claire or were not orders, included in the contract, and they came to about \$900 or \$1,000. Then Mr. Phelps brought up other items, from prices he had there, and covered by this statement here.

Q. But what about this item?

A. This was not to have been furnished and I showed him why it was not to have been furnished, according to the contract. He contended it was, and after consideration and arguing the matter, we talked about it considerable, I says, "Rather than have any discussion about it and he——

The COURT: The question whether he made certain claims for damage. Cant' you answer more briefly?

A. I threshed over this long statement, it is a long statement to thresh through with, but it was after we had agreed—that conversation, this conversation in which we finally discussed and agreed upon all the different items that were to have been furnished under the contract, they came to about \$1100 or \$1200.

The WITNESS: Then he says, "What about our damage for delay?"

A. Well, it was after we had got through all of this statement, as an attempt to show that he brought up the question—that he says, "What about the damages?"



(Testimony of J. W. Hubbard.)

Q. And you really had been some days figuring with him prior to the claim other than the statement as first handed to you, other than the items of damage as set forth in the claim or statement first handed to you?

A. There was no damages mentioned in that statement handed me.

Q. What I mean is this: Had you been figuring with Mr. Phelps upon the statement as first handed you before he made any complaint whatever?

A. Oh, yes, yes—oh, any place from one or two or three days, I would say; yes, might be a shorter time; went over a great deal of detail before that subject ever was mentioned.

Q. Referring to Exhibit 1 which is attached to the Answer herein as an—and in which is stated the date of arrival of different parts of the machinery and different machines, you may state whether or not, with reference to that first item named edger, February 21st, March 30th. Was there any change made in that machine or any extras ordered for it?

A. There was.

Q. Take the second item there and read it, please?

A. Conveyor for burner, February 4, February 21, March 9 and March 30.

Q. Do you recall any letters in which an alteration was requested or in which extras were ordered?

A. No, I can't remember the dates.

Q. Take up the next item on which there is a date of delivery named as arriving here March 30, the next item.

(Testimony of J. W. Hubbard.)

A. Nigger, March 9 and March 30.

Q. Can you recall the date of the letter in which a request for a chain or for an extra for that device?

A. Nigger bar.

Q. Can you refer to a letter in which you were authorized or directed to make any change or add an extra to this particular item, giving the dates.

A. I can't give the dates from memory. There was an extra nigger there ordered, though——

Mr. WILLIAMS: I am willing to concede that that is a copy of the statement that we must have received, I presume. I haven't any copy of it. I would not want to say that every identical item here was received because there are some letters calling attention from time to time to certain things that were not received.

The COURT: That is the date of the shipment?

Mr. WILLIAMS: Yes.

Mr. McCARHY: You are willing, then, to concede that the invoice of the various size which has been produced indicates the date of shipment?

Mr. WILLIAMS: I think that is unnecessary. That is sufficient.

PLAINTIFF'S EXHIBIT 101 was admitted in evidence without objection and read into the record.

Q. Mr. Hubbard, will you examine the invoices that have been produced and tell us whether the four covering the shipments from the Muskegon Boiler Works are in evidence?

A. They are here.

(Testimony of E. L. Kelly.)

E. L. KELLY, called in rebuttal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Your name is E. L. Kelly?

A. My name is E. L. Kelly, yes, sir.

Q. And you reside in Spokane, Washington.

A. Spokane, yes, sir.

Q. You are engaged in what business?

A. Well, not anything except mill building business, is all I have been engaged in.

Q. In what?

A. Constructing sawmills is all I have been engaged in for a number of years.

Q. How long have you been engaged in that business?

A. Well, I have been practically twenty years now—I have been thirty years since I first commenced.

Q. And in what capacity have you engaged in the work; what have you constructed; sawmills?

A. I was superintendent.

Q. What are the duties of superintendent?

A. Well, look after the construction, look after the constuction and answer such matters as may be required from the company, manufacturing the machine, details.

Q. And your duties include the placing and designating or locating of the different machines throughout the mill?

A. Well, according to the plans, yes.

(Testimony of E. L. Kelly.)

Q. And is that person sometimes called the construction millwright, the superintendent?

A. Well, yes, he is the construction millwright.

Q. Were you employed as such in the construction of the Phelps Lumber Company mill at Cusick, Washington?

A. Well, I understood that I was going up there to construct the mill, yes.

Q. About when did you arrive there?

A. I arrived there, I guess, on the 21st of November.

Q. On the 21st of November?

A. Yes.

Q. And you took charge of it, did you, and designated the location of the machinery?

A. Well, I took charge of the frame.

Q. The machines had not arrived yet?

A. No.

Q. Was Mr. Bond there at that time?

A. Yes.

Q. How long did you remain at Cusick in the employ of the Phelps Lumber Company?

A. Well, I was there—I was there until the 24th of December. I guess we left there the 24th of December.

Q. Are you familiar with the placing of iron upon log slip conveyors and the transfer tables, and the quantity required?

A. Well, there is two different styles of log slips and chains. There is a conveyor chain, log slip—

Q. (Interrupting) First of all, are you familiar? Just answer the question first.

(Testimony of E. L. Kelly.)

A. I am familiar with it, yes.

Q. Have you made an estimate of the amount of water and steam piping and the amount of sheet and bar iron necessary to equip the Phelps Lumber Company mill at Cusick?

A. Oh, yes, I have went over those.

Q. Have you these figures with you?

A. I guess Mr. Hubbard has got the figures.

Q. Did you hear the testimony of Mr. Hubbard with reference to the approximate amount of piping, fittings and iron necessary in the mill?

A. I was over the list with him.

Q. Well, did you hear him testify here in court as to the amount?

A. Yes, but I couldn't understand it all.

Q. Well, have you, either with yourself or with the assistance of somebody else, made an estimate or calculated the necessary amount to be used in that mill?

A. I have.

Q. Have you the figures with you or have you reference to them?

A. I have.

Q. You may state the approximate amount necessary, from your calculation?

The COURT: I understood him to say he had made one.

The WITNESS: Yes, I have been over this list with Mr. Hubbard and measured up on the drawings.

Q. Did you assist in making up that statement?

A. Yes, I assisted in making that up.

(Testimony of E. L. Kelly.)

Q. Are the figures there shown and referred to by Mr. Hubbard correct?

A. Made on this sheet here, yes.

Q. Mr. Kelly, what would be the effect with reference to the operation of a band wheel in a sawmill, eight feet in diameter running at the rate of eight thousand feet a minute if the spokes were loose in that band wheel and if it were untrue?

A. I think you couldnt' do anything with it.

Q. What?

A. I don't think you could work it or run it.

Q. Approximately how many sawmills have you in your lifetime engaged in the construction of, just approximately?

A. Oh, about twenty-one or twenty-two.

Q. And have you been about sawmills when they were started in operation?

A. Yes, sir.

Q. Many times

A. Yes.

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Kelly, are you in the employ of the McDonough Manufacturing Company?

A. No, sir.

Q. Have you ever been?

A. I have been, yes.

Q. You were sent here in their employ at the time you went to the Phelps Lumber Company mill?

A. No, I lived here right in Spokane at that time.

(Testimony of E. L. Kelly.)

Q. I understand, but the McDonough Manufacturing Company sent you up there?

A. Well, they recommended me to Mr. Phelps.

Q. And you were discharged by Mr. Phelps?

A. I don't know I was discharged.

Q. Now, with reference to this statement that you were referring to——

A. (Interrupting) They said that they thought they could get along with what help they had without me.

Q. Mr. Kelly, there is no pipe shown in this statement that you are referring to, is there?

A. This is the last item.

Q. Then, you didn't make an estimate as to the pipe at all, did you?

A. Yes.

Q. What was the estimate you made as to the pipe?

A. Well, I guess Mr. Hubbard has got it.

Q. Then, this document that you referred to a few minutes ago, you didn't make an estimate on that document as to the pipe?

A. On this here?

Q. Yes.

A. Not on the pipe, I didn't.

Q. Do you know anything about the amount of pipe that there was necessary to go into that mill?

A. Well, I measured it up as close as I could measure it from the plans.

Q. Could you measure it accurately?

A. Well, I could get pretty close to it.

Q. Did you figure up the number of valves?

(Testimony of E. N. Shoemaker.)

A. The number of valves?

Q. Yes.

A. Well, yes I figured the number of valves pretty close except on the engine, I don't know as I figured them on the engine.

Q. Did you figure the number of bushings?

A. No, I don't know as I did.

Q. Did you figure the number of elbows?

A. I didn't; I figured the piping.

Q. Did you figure the number of reducers?

A. No.

Q. Did you figure the number of U bolts?

A. No.

Q. Figure any of the iron that went into the tightener boxes?

A. No.

Q. Figure any of the bolts necessary to fasten the machinery to the mill?

A. No, I didnt' figure any bolts, only the flat irons.

RE-DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Mr. Kelly, did Mr. Phelps discharge you on account of the claim that you were incompetent?

A. Well, I don't know.

Witness excused.

E. N. SHOEMAKER, a witness called in rebuttal, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Your name is E. N. Shoemaker?



(Testimony of E. N. Shoemaker.)

A. Yes, sir.

Q. And you reside in Cusick, Washington?

A. Yes, sir.

Q. How long have you lived there?

A. Oh, about ten years, most of the time.

Q. What is your occupation?

A. At the present time?

Q. Yes, at the present time?

A. Well, I am one of the publishers of a paper there at the present time.

Q. How long have you been engaged in that business?

A. Two months.

Q. What was your occupation prior to that time?

A. Well, principally working on machinery, engines.

Q. Have you operated an engine?

A. Yes, I have.

Q. For some considerable time or years?

A. Yes, most of the time ten or twelve years.

Q. Have you served in the capacity of engineer?

A. Yes, sir.

Q. Of a steam engine?

A. Yes, sir.

Q. And have you had experience in installing stationary engines?

A. Some.

Q. How many, approximately, have you installed?

A. Oh, I have helped to install about three or four different stationary plants, small and large.

(Testimony of E. N. Shoemaker.)

Q. Have you been in the employ of the Phelps Lumber Company?

A. I was at one time.

Q. Engaged where?

A. At Cusick.

Q. In working in and about their sawmill?

A. Yes.

Q. When was that?

A. That was the spring of 1911, spring and summer, part of the summer.

Q. Approximately when did you commence working for them?

A. I would say about the 10th or 15th of May, if I remember correctly.

Q. About the 10th or 15th of May?

A. Perhaps it might have been a little earlier than that. I can't recall exactly.

Q. What duties were assigned to you?

A. Well, I helped at the pipe fitting. I did most of the pipe fitting.

Q. Who instructed in and about the work in which you were engaged?

A. Mr. Bond.

Q. And how long did your services continue in and about that sawmill.

A. Oh, about to the 25th of July, I think.

Q. Did Mr. Bond instruct the men who were engaged in the construction of the sawmill until its completion, from the time you started in the employ of the lumber company?

(Testimony of E. N. Shoemaker.)

A. Yes, he was foreman of construction, yes.

Q. And instructed the men concerning the location, did he, of the machinery, and the manner of setting them and so forth.

A. I presume so. I can't state positively in regard to all of that. It was under his direction the machinery was set, what machinery was set while I was there, when I was in the employ.

Q. You may state approximately the time at which the installation of the boilers was completed, if you know?

A. The installation of the boilers was completed—you mean the time they were in shape to steam up; that what you mean?

Q. First, I will ask you definitely if you know what is meant by the installation of boilers?

A. Well, that would depend somewhat. I don't know as I would be qualified.

Q. Do you know when the engine was placed under pressure; in other words, when they steamed up, or is there anything by which you can fix the date?

A. If I remember right it was about the 12th or 13th of July when they first attempted to steam the engine.

Q. Do you remember anything that occurred on the Fourth of July with reference to steaming up the engine or not?

A. Steam was raised in one of the boilers on the Fourth of July.

Q. How do you recall it?

(Testimony of E. N. Shoemaker.)

A. I recall it from the fact that I worked nearly all night the night of the Fourth in order to connect up the steam line to the fire pump in order to have some fire protection, and I remember that we raised steam in one of the boilers the next day, the day of the Fourth.

Q. How long prior to that had the boilers been set on their foundation?

A. I can't say positively. The masons had been at work for some time, some little time.

Q. Did you or did you not see persons about there, what were known as the installing crew of the Muskegan Boiler Works.

A. Yes, sir.

Q. When did they leave with reference to the Fourth of July?

A. Well, I would say that they left some ten or twelve days prior to that, approximately. I can't say positively.

Q. From the time the Muskegan Boiler erectors left there, what work, approximately, was done?

A. From that time?

Q. Yes, after that time, after they left?

A. Well, we were engaged in putting piping to the boilers; in fact, I was engaged in piping the boilers at that time—I believe about the time they left I commenced on that.

Q. After they left was the work done, was the Dutch oven work under the boilers constructed?

A. Yes, it was constructed after they left.

(Testimony of E. N. Shoemaker.)

Q. Was most of the steam and water piping or all in the mill put in after the boiler erectors left?

A. Why, the steam piping, yes, and the water piping for the boilers was all done after that time.

CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Pretty busy around there, weren't you?

A. Fairly busy.

Q. They were rushing the work?

A. Yes, we were pushing the work.

Q. You were installing the pipe as fast as you could?

A. Yes.

Q. Did you work on the installation of the pipe all the time?

A. Not all the time, no.

Q. I heard you say steam was brought into one of the boilers on July fourth. Was it brought into all or just the one?

A. I believe that we only raised steam in one boiler.

Q. Were the others connected? How could you raise it in one without raising it in all.

A. Each boiler is connected separate to the steam drum and there is a valve, intake between each boiler and the steam drum.

Q. What was the purpose in raising the steam on that for July fourth?

A. Why, as I stated before, I think it was raised for the purpose of having fire protection for that day.

Q. This Dutch oven that you speak of, isn't it a fact

(Testimony of C. B. Pride.)

that that is something that must be conceded after the boilers are swung?

A. Yes, after the boilers are swung.

Q. The condition of the boilers is that they are hung in stirrups from a support above, are they not?

A. Yes, sir.

Q. And the Dutch oven is of brick and fire clay and things like that, built in under it after it is swung?

A. Yes.

Q. On this date, on July 13th, that you refer to, July 13th or 14th, when you say steam was put in the engine, was everything connected up then so that the mill could be operated?

A. I don't know that it was. It may have been. It seems the mill started, I believe, on the 15th, if I remember correctly.

Witness excused.

C. B. PRIDE, a witness called in rebuttal, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. What is your name?

A. C. B. Pride.

Q. Where do you live?

A. Spokane at the present time.

Q. What is your occupation?

A. Mill engineer and private constructor.

Q. How long have you been engaged in that occupation?

A. Since I began, thirty-two years.

(Testimony of C. B. Pride.)

Q. How many plants have you had charge of the construction of, approximately?

A. Well, I should say in the sawmill line about eighteen or twenty; something in that neighborhood.

Q. How long have you been engaged in that business in this territory? In Washington?

A. Six and a half years.

Q. You are familiar with what is known as a log slip in a sawmill?

A. Yes, sir.

Q. State what iron, in and about that device, is usual or common, standard?

A. Usually they line part of the log slide or log haul up which the chain draws up from the river—that is to say, where the chain takes it, generally about one-eighth of an inch thick; and oftentimes they line the slide of the logs as well, side of the slip. That is un-called for——

Mr. WILLIAMS: I object, as the witness is not answering the question, and move to strike.

The COURT: The objection will be sustained and the answer stricken.

Q. State what is the necessary construction or the common construction?

A. The lining of the conveyor underneath the chain.

Q. And the percentage is small, is it, or large, of the log slips which are lined on the side?

A. The only specification, as I remember, of lining up underneath the chain, except where people want a very extensive mill, where it will never wear out, it is

(Testimony of C. B. Pride.)

desired then. Logs will seldom stick to the side of the conveyor very much.

Q. What is the necessary iron for the log deck, inside of the mill?

A. The skids is usually ironed on top.

Q. What is the fact with reference to iron being placed on the floor between the skids?

A. I don't know or never have—the custom is not to iron them.

Q. What is the custom with reference to placing iron upon the bottom and the sides of the main burner conveyors which carries the slabs to the fire pit; is it usual or not to iron it?

A. That is about equally divided, half and half.

Q. Well, with reference to conveyors generally throughout the mills, what amount of iron is necessary?

A. The modern mills today, they usually iron underneath where the chain travels. The majority of them are built that way, except very extensive mills that they iron all over, but it is not called for. Up to within the last two or three years they seldom put any iron under the conveyor chain, but now it is quite common to place it underneath the chain.

Q. Have you heard the testimony here with reference to the Phelps Lumber Company mill at Cusick, concerning its size?

A. Somewhat; yes, sir.

Q. Have you made a calculation of the amount of steam piping necessary to pipe that mill?

A. Yes, sir.



(Testimony of C. B. Pride.)

Q. And the water piping?

A. Yes, sir.

Q. And of iron necessary for conveyors and transfers?

A. I didn't figure it on the conveyors; I just made a rough estimate of the piping required for the plant.

Q. Can you state the conclusion of that calculation that you have made with reference to the piping?

A. The cost of piping at Spokane, I made a rough estimate yesterday and I decided that \$750.00 ought to buy all the piping required throughout the plant.

Q. And what would be the approximate value of that piping at Cusick?

A. I didn't calculate any further than that.

Q. Well, would it or would it not be the Spokane price with the freight added?

A. Yes, sir; I should say so; certainly.

Q. Can you not make an estimate of what that would be, or can you?

A. I should say it would make a difference of only fifty dollars.

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Do you know anything about the freight rates between here and Cusick, or did you in 1911?

A. Well, I judge from the distance I have shipped other material about the same distance, I would not—I could not from the little time I had know what the exact mileage would be.

(Testimony of C. B. Pride.)

Q. Would you say that the freight on that iron did not amount to as much as two hundred dollars?

A. No, I don't think it would go over fifty.

Q. You would fix it at fifty dollars, then?

A. Yes, sir, freight rate at fifty dollars.

Q. You made no investigation, then to determine accurately.

A. Not the freight rate, no; it is a guess, that would be.

Q. What is the weight of that pipe that you say would amount to \$750.00.

A. I didn't figure out the weights.

Q. Well, can you tell approximately what it is?

A. No, sir.

Q. Then your idea about fifty dollars freight is just a guess, is it?

A. Yes, sir, I should say it must be over half a car-load, all the pipe.

Q. Now, can you figure the amount of pipe now any better than you could have figured it probably in 1911 before the mill was completed?

A. Well, I can only figure it from the plats?

Q. And all you know about the plat is what Mr. Hubbard pointed out to you?

A. Mr. Kelly showed me the plats yesterday. He was the one that made out the plans.

Q. You know nothing about whether they were the plans except what Mr. Kelly told you?

A. Yes, sir.

(Testimony of C. B. Pride.)

Q. And Mr. Kelly pointed out where the pipes would go, did he?

A. The plans were produced and the pipes were shown, where they ran from the boiler to the machinery and the engine, and I figured on them.

Q. You didn't rely upon anything that Kelly told you?

A. No, sir.

Q. Or anything Mr. Hubbard told you?

A. No, sir; we had the plans to figure on.

Q. Did you figure anything about the amount of bolts necessary?

A. No, sir.

Q. Amount of valves?

A. No, sir.

Q. Amount of bushings?

A. The valves and fittings are included in this; counted them up as they are shown on the plans.

Q. Did you make any estimate of the sheet metal?

A. No, sir.

Q. None of those things?

A. No, sir.

Q. Your estimate is simply the plate?

A. Yes, sir.

Q. And the number of feet on it?

A. Yes, sir.

Q. Now, with reference to this iron that you speak of as being necessary for log decks or for the conveyor system what you mean is this, is it not, Mr. Pride, that you can get along without them being ironed?

(Testimony of J. W. Rogers.)

A. Yes, sir; very easily.

Q. But that it is preferable to iron them?

A. Yes.

Q. And if it is not ironed slivers will develop in a very short time, will they not?

A. Yes, sir.

Q. The running of the log against the side of the conveyor or the slabs that are carried on to the burner will cause splinters and thigs like that to develop?

A. They will wear out in time.

The WITNESS: The decks of the log arrangement, for myself, I would rather not have ironed, for it makes the men more liable to slip down and become injured; and it is very inexpensive to put in new planks every year or so.

Q. It is required about every year to replace the planks without iron?

A. Yes, sir.

Witness excused.

J. W. ROGERS, a witness called in rebuttal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. What is your name?

A. J. W. Rogers.

Q. And where do you reside?

A. Spokane.

Q. What is your business?

A. Manufacturer of lumber.

(Testimony of J. W. Rogers.)

Q. How long have you been engaged in that business?

A. About thirty years.

Q. Are you now operating a saw mill?

A. Yes, sir.

Q. Where?

A. Dalkena, Washington.

Q. How far is that from the mill of the Phelps Lumber Company at Cusick?

A. I think they call it about seven miles.

Q. Are you familiar with the amount of iron that is necessary on a log slip in a saw mill?

A. Yes, sir; what we have always used since I have been running the mill.

Q. What is the amount usual or common or necessary?

A. Well, we always, as a rule, put it under the chain to make the chain run easier, and we seldom ever put any on the sides, with the exception where a cross-cut conveyor empties into one that is running at right angles, then we put some there to break the force of the slabs and the edgings for a short distance, probably six feet, or something like that, on the sides.

Q. Are you familiar with the device known as the log deck?

A. Yes, sir.

Q. And what is the usual amount of iron upon that device?

A. All we ever used with iron skids or iron on top of the wooden skids, rather, just keep them——

(Testimony of J. W. Rogers.)

Q. (Interrupting). I don't care for what you used. Just state, if you know, what is the usual and customary construction of that device?

A. That is the usual construction, what is used in all mills that I have seen. That is all the iron used on the log deck.

CROSS-EXAMINATION.

By MR. WILLIAMS:

Q: The question of the use of this iron is simply a matter of economy?

A. Yes, sir; we always consider wood cheaper than iron around a saw mill.

Q. But you consider iron lining better?

A. Well, that just depends; in some places it is better.

Q. In other words, you don't have to replace these conveyors so often if you use some iron lining?

A. No, you would not.

Q. And without using iron lining you have got to repair them very frequently?

A. Oh, they will last a reasonable length of time.

Q. And what you are testifying about, as I understand it, Mr. Rogers, is the way that you have constructed your mill?

A. Well, and other mills that I have visited.

Q. You have seen plenty of them with iron on the side of the conveyor, haven't you?

A. Well, not so very many.

Q. Have you seen some?

A. One or two, possibly.

(Testimony of W. D. Starbird.)

Q. And it is an improvement?

A. Well, it is an expensive improvement.

Q. The same way as regard to the log deck?

A. Yes, sir. I have never seen a log deck, though, with iron on except on the skids.

Q. The fact is that a conveyor and deck and places like that, they are all under extreme wear, are they not, by reason of logs bumping on them, or heavy timbers?

A. Not the log decks so much as the conveyors.

Q. And without iron splinters develop then, catching things?

A. Certainly, sometimes.

Witness excused.

W. D. STARBIRD, a witness called in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Your name is W. D. Starbird?

A. Yes, sir.

Q. And where do you reside?

A. In Spokane.

Q. What business are you engaged in?

A. Engaged in the manufacture of saw mill machinery and designing and constructing saw mill plants.

Q. And the superintending of saw mill plants?

A. Superintending and construction; yes, sir.

Q. How long have you been engaged in that business?

A. Well, I started in that as a profession something over two years ago.

(Testimony of W. D. Starbird.)

Q. What has been your business prior to that time?

A. In the construction and operation of saw mills and saw mill plants.

Q. Well, what has the trade been in your occupation in the last two years, you say?

A. Yes, sir.

Q. Two years ago?

A. Something over two years ago, pretty near three years ago that I made this my business, of building and constructing and designing saw mill plans.

Q. And what had you been doing prior to that?

A. Prior to that I was more in the operating line, but following the construction of saw mills and the operation of them after they were constructed, both for myself and for other people.

Q. You are familiar with the machine known as the log slip, are you not?

A. Yes, sir.

Q. And you may state what is the necessary iron used on that device?

A. Well, the necessary iron used on there that is generally done or that is absolutely necessary—you can use it without any iron on it, and it is often done.

Q. Well, what is the amount of iron that is usually used, common and standard?

A. Why, the most usual for this method is to put on a wooden skid and either faced with sheet iron or railroad iron for the logs to roll on.

Q. What are you speaking of, the log slip or the log deck?



(Testimony of W. D. Starbird.)

A. I am speaking of the log deck.

Q. Finish about the log slip first?

A. In regard to the log slip?

Q. Yes.

A. Why, the iron on that, as far as I would consider necessary, would be the——

Q. (Interrupting). I don't want to know what you consider necessary. I want to know what is the common practice in the construction of saw mills, single band mills, such as has been described here.

A. I hardly know how to answer your question as to common practice. It varies considerable.

Q. I will change it. Is it the common practice or is it not the common practice to place iron upon the sides of the trough in the log slips, in a single band mill?

A. Well, I don't know that that is usual, but that is in the majority of cases done.

Q. State what your experience has been with reference to log decks and the ironing of them?

A. Ironing of log decks, the common way of doing it is to put on wooden skids and put on top of them either a flat or a railroad iron.

Q. Had you ever seen any placed between the skids?

A. No, sir.

Q. What is considered necessary iron in the conveyors?

A. I don't think that there is any iron in the conveyors that is absolutely necessary.

Q. Well, state what the usual and customary quan-

(Testimony of W. D. Starbird.)

tity of iron, where it is necessary, in and about the conveyors?

A. Well, in large plants, where there is no expense spared, they are sometimes lined all over on the inside, but on the smaller plants, the ordinary plant, it is very common not to put in any lining at all.

Q. What with reference to single band mills?

A. Single band mills, they would ordinarily not put in any lining at all except the place where the conveyor deposited on to another; not always done in that case, even.

Q. If a band wheel eight feet in diameter running eight thousand feet per minute contained loose spokes, and was untrue, what, if you know, would be the duration of that; how long would it run in that condition?

A. Wouldn't run very long.

Q. Would it run or would it not be liable to run for two or three weeks?

A. No, sir. I would not think it would run two or three weeks. I never saw it demonstrated, but my judgment would be it would go to pieces pretty quick.

Q. Are you familiar with the dimensions of the Phelps Lumber Company mill at Cusick, Washington, at the present time?

A. Fairly so; yes, sir. I have seen drawings for it and know the general dimensions of it.

Q. Have you made an estimate of the amount of piping necessary for steam and water therein?

A. In a general way only; yes, sir.

(Testimony of W. D. Starbird.)

Q. State what your estimate is of the amount necessary?

A. Well, in my judgment and looking over the plans and figuring out, I should say from seven to eight hundred dollars for the piping.

Q. By "piping" you mean all valves; do you include valves, elbows, bushings and fittings, connected with the piping?

A. Connected with the piping and connecting the boilers, also.

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Starbird, the question of iron for conveyors and log slips is simply a question of economy, isn't it?

A. Largely so; yes, sir.

Q. That is, with iron on the sides it is better than without iron?

A. Yes, sir.

Q. Now, in these figures, Mr. Starbird, on the steam and water pipes, did you make any figures on the question of valves, on the question of bushings, and also on the question of reducers, and on the question of sheet iron, any other figures than are referred to in the complaint here?

A. I didn't make any details.

Q. That is the Spokane price, the price of seven hundred or eight hundred dollars; that is the Spokane price?

A. That would be approximately.

Q. Do you know what the freight is on that stuff from Spokane to Cusick?

(Testimony of W. D. Starbird.)

A. No, I don't know.

Q. Freight is a good big item on piping, isn't it?

A. Not very large; no.

Mr. WILLIAMS: That is all.

REDIRECT EXAMINATION.

By Mr. McCARTHY:

Q. One question that I overlooked that I want to prove by this witness: State, if you know, what is meant by the installation of boilers, in stationary boilers?

A. The installation of them?

Q. Of boilers in the saw mill.

A. Why, as I understand it, the installation of a boiler would mean the setting of them in place and the connecting of them ready for the steam to be taken from them.

Q. What is the only work in and about the mill which will be necessarily delayed in its performance by the installation of the boilers?

Mr. McCARTHY: Q. What new work was it that would be delayed, as far as you could see; could the piping in the mill all have been done before the boilers were installed?

A. Yes, sir.

Q. Then, what would be the only work, after the boilers were installed, which must necessarily be done afterwards?

A. Connecting up the piping between the boiler and the main line under the mill, and the engine, which could have been brought to the edge of the boiler room before the boilers were installed.

(Testimony of W. D. Starbird.)

Q. And about how long would that take?

A. Two or three days at the most.

RE-CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Do you know how these boilers were installed?

A. No, sir.

Q. Do you know the method of installation?

A. No, sir.

Q. Do you know whether it was necessary that the foundation for the boilers should be built after the boilers were swung or not and installed?

A. No, I don't know that; I don't know that positively. I don't know just exactly what their installation was.

Q. And you don't know just how long, then, it would take if that was necessary; you don't know just how long that would take to build the underpinning?

A. That would be after the boilers were installed?

Q. That could have been done after?

A. This question that I just answered for Mr. McCarthy is the delay that would be required after the boilers were installed, when the boilers were installed; that would be the boilers were in, complete, ready to make steam.

Q. You would understand, that is, any one that was to install them should build the foundation underneath, build the dutch oven, if there was a dutch oven over them, build that complete, and all of that, would you?

A. That would depend entirely upon the agreement as to whether the specifications was to furnish the foun-

(Testimony of W. D. Starbird.)

dation or the man who was to install them was to furnish that.

Q. If that was not included in the installation, that would all have to be done afterwards?

A. It should be done first. I can't understand how the boiler could be installed until after the foundation was put in.

Q. Assume it was a boiler that was swung; hung in a sling?

A. Hung in a steel suspension?

Q. Yes.

A. The foundation would have to be in to put the steel suspension in.

Q. And would the dutch oven be constructed before that?

A. Before the steel suspension was there?

Q. Yes.

A. No.

Q. The dutch oven would be built after the boiler was installed; that is, after it had been suspended and put in place?

A. As I understand it, these boilers were steel cast boilers, and the dutch oven is built up out of boiler plate and afterwards lined with brick.

#### RE-RE-DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Could part of the dutch oven, or could it not, have been installed before the boilers were set in their place?

A. Why, the foundation could have been all put in and all ready, and I don't know whether they could have

(Testimony of E. W. Harris.)

built the walls to any advantage or not. Part of the dutch oven could have been built, that is, fastenings put around it, I presume. I don't know whether that could have been done to advantage or not; I am not so clear.

Witness excused.

E. W. HARRIS, called in rebuttal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. What is your name?

A. E. W. Harris.

Q. Where do you live, Mr. Harris?

A. Spokane.

Q. What is your business?

A. General manager of the Dalkena Lumber Company.

Q. And how long have you been engaged in the lumber business?

A. Ten years.

Q. Is the Dalkena Lumber Company now engaged in operating a saw mill?

A. They are.

Q. State, if you know, what is the amount of iron usual or necessary about—in and about a log slip?

A. Generally where the chain runs.

Witness excused.

PLAINTIFF'S EXHIBIT 127, 128, 129, 130 and 131 were admitted in evidence without objection and read into the record.

(Testimony of Joseph F. Sexton.)

JOSEPH F. SEXTON, a witness called in surrebutal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Your name is Joseph F. Sexton, is it?

A. Yes, sir.

Q. And where do you reside, Mr. Sexton?

A. 2024 Second avenue, Spokane.

Q. How long have you resided in the city?

A. Oh, twenty-two years.

Q. And what is your business?

A. Lumberman.

Q. And what connection, if any, did you have in 1911 and since then with the M. A. Phelps Lumber Company?

A. I am connected with the M. A. Phelps Lumber Company.

Q. Office with them?

A. Yes, sir.

Q. Mr. Sexton, are you acquainted with Mr. Hubbard?

A. I have met Mr. Hubbard.

Q. Were you present at a conference or meeting between Mr. Phelps and Mr. Hubbard in the company's office in July, 1911?

A. I think it was in July; yes, sir.

Q. What, if anything, was said at that time, Mr. Sexton, between Mr. Phelps and Mr. Hubbard with reference to the claim of the Phelps Lumber Company?



(Testimony of Geo. H. Libby.)

A. During the time that I was in the room Mr. Phelps was making claim of damages on account of machinery not furnished or material for the mill not furnished, and from the fact that the machinery was not——

Mr. McCARTHY: Now, if the Court pleases, we object to this, unless the witness limits it to the conversation testified to by Mr. Hubbard.

GEORGE H. LIBBY, witness called in surrebuttal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Libby, state your name to the jury?

A. George H. Libby.

Q. What is your business?

A. Accountant.

Q. With whom?

A. Phelps Lumber Company.

Q. Were you an accountant with them in July, 1911?

A. I was.

Q. At their office here in the city?

A. Yes, sir.

Q. Look at Plaintiff's Exhibit 121, and state whether or not you prepared that?

A. Yes, I did.

Q. Do you know at whose request it was prepared?

A. At the request of Mr. Phelps, on behalf of Mr. Hubbard. Mr. Hubbard asked the Phelps Lumber Company for a statement——

Mr. McCARTHY: I object to the last part of the statement and move to strike it.

(Testimony of Geo. H. Libby.)

Mr. WILLIAMS: Was Mr. Hubbard there?

A. Yes, he was in the office and asked for a statement.

Q. Where did the information come from that was put on that paper?

A. The information came from the books and the vouchers of the Phelps Lumber Company.

Q. Do you know how Mr. Hubbard got it?

A. I do not recall how it was placed into his hands, the actual statement; I do recall it was prepared at his request.

#### CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Did you start in and prepare it right while he was waiting there?

A. Not at that particular time; went through the vouchers first, because we didn't have time to prepare the statement at once. We submitted to Mr. Hubbard for his examination the document consisting of the original, the records of the company, from which the statement was made up.

Q. And did you give that to him the same day?

A. Probably a day or so later.

Q. How many trips did he make to the office, do you estimate, before you delivered it to him?

A. I can't say.

Q. About how many?

A. I saw him in and out of the office in consultation with Mr. Phelps several times.

(Testimony of M. A. Phelps.)

Q. And was it the last time he was in that the statement was delivered to him?

A. I can't say.

Q. Was it prepared so it could have been delivered before the last time?

A. It was.

Q. About how many days do you say, approximately, until you were ready for delivery, until it had been prepared?

A. The next day or so; might have been a couple of days.

Witness excused.

M. A. PHELPS, recalled in surrebuttal, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. What was the reason for that reference to the additional amount of chain?

A. The first measurement was, I suppose, approximate. It took this much more to complete the mill.

Q. What I mean is, did it carry it to the water, or didn't it?

A. No, it didn't; no.

Q. Now, Mr. Phelps, regarding this statement that it is claimed that you furnished Mr. Hubbard in July, 1911; did you furnish him such a statement?

A. I had it furnished him.

Q. What I mean is, did you hand it to him?

A. I don't remember about that; I don't remember handing it to him.

(Testimony of M. A. Phelps.)

Q. At or before the time of the furnishing of that statement was anything said between yourself and Mr. Hubbard about any damages that you claimed or anything on account of material that had not been furnished either by them or to you, but what was called for by the contract?

A. I think that matter was taken up about that time, probably at that time that he got the statement.

Q. What date was that statement furnished?

A. July 22nd.

Q. What, if anything, at that time was said between yourself and Mr. Hubbard on that point?

A. I told him that—how we had been damaged in their not furnishing the machinery on time and on account of material they still would have to furnish in order to complete it; and the damage on the whole proposition.

#### CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Then, is what Mr. Libby says correct; that the statement was not completed until about three days after Mr. Hubbard had been there demanding a statement?

A. I don't remember him saying three days.

Q. Well, approximately, he thought it was not prepared, did he not?

A. It was not prepared on the minute he asked for it, but he went at it and got it up as soon as possible, probably it took a day or so.

Q. Was it delivered to Mr. Hubbard as soon as it was completed?

(Testimony of M. A. Phelps.)

A. I can't say about that; I presume it was, but I can't remember so positively about that.

Q. Did you say anything to Mr. Hubbard about the nature of your demands at the time he came in the first time and asked for the statement?

A. I couldn't remember about that.

Q. You can't remember whether you ever talked to him about claims other than those made in the statement, until after you had been checking over the statement for some days?

A. After I had been checking it over?

Q. Yourself and Mr. Hubbard had been disputing over the items and the claim for several days?

A. I don't know. I know that he was in the private office and I was talking to him about the items of damage and I called Mr. Sexton in, the vice president of the company.

Q. Well, but is it not true that after you delivered him this statement you and he spent some days checking the items on there before you mentioned any damage not stated therein?

A. No, we didn't spend any time—spend any time checking it; we gave Mr. Hubbard the invoices that—the invoices were taken from the original invoices we paid—and we gave them to him and he checked them off himself, off against the statement.

Q. And then after that you mentioned that you were—that there were other damages?

A. Well, it was along about that time; I wouldn't want to say just the——

Mr. McCARTHY: All right, that is all.

RE-DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Look at Defendant's Exhibit 126, for identification, and state whether you had any correspondence with the Muskegon Boiler Works?

A. Yes, I had quite a little.

Q. Did you receive numerous letters from them?

A. Well, not perhaps not "numerous," but quite a number of letters.

Q. Is that letter that you have in your hand now one that you received in answer to any that you wrote that company?

A. Yes, I received that.

EQUITY CASE.

Mr. EDGE: I have added to the claim in our equity case \$1,601.35. That is the amount that is admitted and the receipt is attached, and I have also added a prayer to the complaint for that amount, making the total demand in the equity case \$7,483.98.

Mr. WILLIAMS: The item of \$45.13 is admitted, made up of four different items; on the next page an item: "One nigger bar complete, \$75.00." That item is conceded, and the freight.

The COURT: What does the freight amount to?

Mr. WILLIAMS: \$12.92. \$75.00 is the item which is conceded, and the freight \$12.90. The item near the bottom of that page, one band saw, \$89.00, and freight on the same, \$4.10, is conceded. In addition to that, I will state now to the Court that as to the item on the next page, number 30,659, boiler conveyor stand, the item

(Testimony of J. W. Hubbard.)

will be conceded, but not in amount. We will concede \$30.00.

The COURT: You can proceed then, gentlemen. Take the items up informally.

Mr. McCARTHY: About the sixth item from the end, being 4 HI attachments, it is mentioned as \$50.00. I find that is a typographical error, and should have been fifty cents.

The COURT: It is fifty cents on mine.

Mr. WILLIAMS: I understood from Mr. McCarthy yesterday that they didn't make any claim for this difference in the boilers, the extra boilers.

The COURT: That leaves the first item admitted, then, does it?

The COURT: Is the first item agreed upon, the amount for the boiler?

Mr. McCARTHY: We will concede——

The COURT: What is the amount here that is in that?

Mr. WILLIAMS: \$2,675.00. That is the boiler and the installation of the three.

The COURT: The next item is one steel drum.

Mr. WILLIAMS: That is denied.

J. W. HUBBARD, witness called on behalf of the plaintiff, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. McCARTHY:

Q. Mr. Hubbard, have you a statement of the items

(Testimony of J. W. Hubbard.)

of extras that were furnished to the Phelps Lumber Company?

A. I have.

Q. And have you the statement with you?

A. I have.

Q. And was a copy of that statement delivered to the defendant, Mr. Phelps, as president of the Phelps Lumber Company?

A. It was.

Q. And when was that sent to him?

A. April 22nd it was mailed.

Q. And did you, or did you not, have a conference with him on or about July 22nd?

A. Yes.

Q. And did he claim at that time any items in that statement had not been delivered and received by him?

A. No, he didn't claim that they were not received.

Q. What, if anything, did he say with reference to paying the items there; I mean the ones which are spoken of as not being admitted?

A. Well, he refused to pay for them and——

Q. (Interrupting). What was his claim in reference to paying for them or why he would not pay for them?

A. Well, that they should have been furnished.

Q. As part of the original contract of which we have been speaking here?

A. Yes.

Q. That contract growing out of the instrument dated September 15th?



(Testimony of J. W. Hubbard.)

A. Yes.

Q. Now, you have examined—

Q. The item of the extra steam drum is the sum of \$130.00, a reasonable value for that item?

Mr. McCARTHY: Q. You may state, Mr. Hubbard, whether this drum was ordered?

A. The two boilers—naturally these boilers were all set in one battery, all connected together to make one complete steel boiler setting. The original order called for two boilers and consequently a steam drum long enough for a two-boiler installation. In putting in a third boiler we necessarily had to extend this steam drum one-third so as to cover the third boiler.

Q. The next item, conveyor for the lath room, refuse conveyor for the lath room, your letter of 3-30-11; ours 4-10-11. Is that one of the letters which have been introduced in evidence?

A. Yes.

The COURT: Have you a copy of the letter there? (Letter of Phelps Lumber Company, dated March 30th, 1911, read).

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Phelps claimed this was a part of the complete bill, didn't he, Mr. Hubbard?

A. I believe he said so.

Q. This is the same conveyor we have referred to heretofore in evidence here with the hog elimination; the way it was left before this conveyor item was furnished it dumped the lath refuse out onto the floor?

(Testimony of J. W. Hubbard.)

Mr. WILLIAMS: What is that?

A. What is that? Why, Mr. Phelps said he would be——

Mr. WILLIAMS: Will you just answer my question?

A. You asked me where it would dump it?

Q. I asked you after the hog was eliminated where the refuse was carried and what was done with it.

A. It was dumped into the conveyor, same as it would have been if the hog was not there, only it was not ground up.

Q. Where was it left; anything to carry it off?

A. The conveyor would carry it off.

Q. Without a hog there?

A. Without the hog there, yes.

Q. Didn't you testify the other day something about—you referred to the letter which Mr. Bond wrote you calling attention to the fact that unless there was a conveyor put in they would simply have to fix up the scraps and throw them out of the window?

A. That was what Mr. Bond said, but they would have been dropped into that conveyor, just the same.

Q. So there was no necessity for them to furnish the conveyor?

A. The conveyor was made necessary by leaving out the hog, yes.

Q. I mean leaving out the hog, was that conveyor necessary?

A. Yes; yes, it was necessary after the hog was left

(Testimony of J. W. Hubbard.)

out; after the hog was cut out of the original specifications and plans, then the conveyor was necessary.

The COURT: Can you indicate in some way what the system of conveyors were before the hog was taken out and what change was made afterwards?

(Here the witness indicates to the Court, none of which illustration was audible to the reporter).

Mr. WILLIAMS: Q. With the hog left out in there, Mr. Hubbard, what became of the lath trimmings?

A. They were dumped into this hog.

Q. The lath trimmings?

A. Yes.

Q. Under the original plans?

A. Under the original plans; yes, sir.

Q. Now, isn't it a fact that this conveyor originally constructed—just about the point that this mark is made there?

A. Yes, sir.

Q. Isn't it a fact that the lath trimmer set over here? (Indicating).

A. Yes, sir; about there.

Q. And how far was that lath trimmer away from this conveyor as you had planned it?

A. It might have been twelve feet from here to here. (Indicating).

Q. And what way did they have of taking care of the trimmings from this lath machine?

A. Just the way that they took care of the refuse from every other machine in the mill, by a hog. We put

(Testimony of J. W. Hubbard.)

in a sloping chute and these trimmings from the lath mill traveled down that into the conveyor.

Q. How high was that lath trimmer above this original conveyor?

A. The lower floor is sixteen feet high between the two sills, which are twelve inches each, making it about seventeen or eighteen feet.

Q. The trimmer then?

A. The trimmer was thirty feet above the top of this floor, making it at least eighteen to twenty feet.

Q. Then you understand the trimmer would be about twenty feet above this conveyor as originally planned?

A. Yes, about twenty feet above the conveyor.

Q. And your idea is that a chute or something of that sort so as to chute that down from the trimmer down to the original conveyor as planned?

A. Just the same as we did here.

Q. Just answer the question.

A. At the end of every conveyor it is necessary to have a wooden shoe.

Q. Now, Mr. Hubbard, isn't it a fact that the hog stood up nearly on a level with the lath machine?

A. It is not, Mr. Williams. The hog is on a lower floor.

Q. How much below the lath machine is the hog; just give it approximately; I can't take up too much time with this?

A. Here is the upper floor here on which the lath machines sets; here is the conveyor. The conveyor should be put down very close to the end of this; that

(Testimony of J. W. Hubbard.)

comes up and deposits into the main conveyor to the hog. The hog would set in here and would be maybe five feet above the floor. The lower end of this conveyor should be down on the floor, and consequently the material from this point here would easily, with an angle of thirty degrees, dump into the conveyor.

Q. Did you make any plan of that same kind and submit it to the Phelps Lumber Company?

A. That plan is shown right here in pencil.

Q. What I say is: Did you enclose any plan of that kind to the Phelps Lumber Company?

Mr. McCARTHY: We object. We offered the plans and they were rejected.

The COURT: You may answer the question, yes or no.

Q. And the plans show how that was to be done by the fact that the lath mill set over there?

A. Yes, sir.

Q. Have you those plans here?

A. No, we haven't the plans here.

DIRECT EXAMINATION—*Continued.*

By Mr. McCARTHY:

Q. Were the items mentioned in number 20,387 of the exhibit attached, making a total of \$18.90, were these furnished to the defendant?

A. They were furnished him.

Q. At his request?

A. At his request.

Mr. WILLIAMS: That is, if there was any request it is in writing.

(Testimony of J. W. Hubbard.)

Mr. McCARTHY: Yes, his letter of December 31st, 1910.

The COURT: What is this chain?

A. This is an extension to the log haul from the river; hauls the logs from the river, and the original amount specified was 450 feet.

Mr. McCARTHY: Is this chain, or is it not, specified in these specifications?

A. It is not.

Q. It is in addition to the amount specified?

A. Yes.

#### CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. You know, do you not, that the log slip with the chain that you furnished didn't reach the water, don't you?

A. I know that Mr. Phelps specified the length of the log slip in his letter when he told us the kind of a mill he was going to build. Where is that long first letter?

Q. That is the letter you are referring, under date of July 10th?

A. Yes, the location of the mill with reference to the river was never changed afterwards.

Q. Didn't you feel at all, Mr. Hubbard, that you were going to furnish anything under this item of the contract relating to anything that was necessary to complete the mill; didn't you expect to furnish anything under that?

A. We did; yes.

(Testimony of J. W. Hubbard.)

Q. You thought it was necessary, didn't you, that this chain should reach the water, didn't you?

A. It did reach the water; it reaches the water now. If I might explain about that chain, what was done with it.

Mr. WILLIAMS: Go ahead.

A. When I went down to the mill after it was in operation three weeks, the chain was lying on the river bank about half buried in dirt and sand. I examined the chain myself, counted the links, and I also saw the extra nuts that they asked for in the storeroom, five of them, and the chain lying on the river bank, wasn't no mistake about it; I saw the chain lying there on the river bank after the mill had been in operation three weeks. So it was not necessary, it was ordered, but it really wasn't necessary.

Q. So you can identify your chain wherever you see it, can you?

A. I knew that chain; yes.

Q. This was in July when you were there, wasn't it?

A. Yes, the latter part of July.

Q. The stage of the water was low at that time?

A. I can't say. I don't know the natural stage of the river.

Q. Don't you know that it was the very lowest stage of the water in July?

A. No, I don't know that river at all.

Q. Well, do you know whether it was high water?

A. I don't know whether it was high or low water at that time.

(Testimony of J. W. Hubbard.)

Q. These things that you are charging for; you didn't ship them out yourself, did you?

A. I did.

Q. Did you check them out?

A. I saw them.

Q. You saw them and know they were put on the train?

A. Indeed, I did.

Q. Anything go out of that plant there that you didn't see?

A. Not in carload lots, not for such contracts, especially when I take the contract, and I am watching the manufacture of it.

Q. You checked it out yourself?

A. I checked it double, because we buy this chain from Columbus, Ohio, and we check their invoice before we pay for it when the material comes in, it is counted up, and then it is loaded directly on to the cars, so we have a double check on it.

Q. All of these items, these mentioned here, are all related to this extension of the log slip?

A. They were supposed to be, and the extension apparently—that extra extension was not put in.

Q. That is what it relates to, anyway, whether it was put in or not?

A. Yes. They refer to the same thing. Whether it was used or not I can't say.

Q. You don't know whether the idler was used or not?

A. I don't say that the idler was not used; no.



(Testimony of J. W. Hubbard.)

Q. The Phelps Lumber Company did not order them as extras, did they, these different items?

A. Their letter reads word for word, the date—let me see if I can get hold of that letter.

Mr. McCARTHY: If it was not included in these specifications and they said “please ship it,” no matter what they said about it—

CROSS-EXAMINATION.

By Mr. WILLIAMS:

Q. By making this change suggested you eliminated certain shafts and pulleys and things of that sort, didn't you?

A. No, I hardly see how we did, Mr. Williams.

Q. Well, did you or did you not?

A. We didn't, because the engine drove on the same pulley, or would have.

DIRECT EXAMINATION—*Continued.*

By Mr. McCARTHY:

Q. When was that nigger belt ordered, if you know?

A. This does not show. It was shipped on March 8th, N. P. car 8568, of March 8th, but inasmuch as it was ordered—it was ordered through Mr. McIntyre, we got the order from him.

Q. About when did you get the order?

A. Well, it is hard to tell how long, how long it was before that time; I don't know. You see Mr. McIntyre's correspondence has not been introduced here, so it does not show.

CROSS-EXAMINATION.

By Mr. WILLIAMS:

(Testimony of J. W. Hubbard.)

Q. Mr. McIntyre was your salesman?

A. Yes.

Q. You had no order from the Phelps Lumber Company for this nigger there; says it was given through Mr. McIntyre?

A. That is all.

Q. Mr. McIntyre had a right to solicit orders, did he?

A. Had the right?

Q. Yes.

A. He was a salesman exclusively.

The COURT: Take up item 2558.

DIRECT EXAMINATION—*Continued.*

By Mr. McCARTHY:

Q. What is that?

A. That is a bracket box that is used where the large gears, bevel gears which drive the edger come in. The original specifications called for a large——

CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. You don't know what the order was for that?

A. A letter from Mr. McIntyre.

Q. You had no direct communication or talk with Mr. Phelps or Mr. Bond?

A. We did not.

Q. You don't know the circumstances under which that was furnished by Mr. McIntyre, do you?

A. I do not. Mr. McIntyre was our salesman soliciting order and it was ordered through him.

Q. And he requested you to send this for them?

A. Yes, he told us in his letter of that change.

(Testimony of J. W. Hubbard.)

Q. Have you that letter?

A. No, I have not. Mr. McIntyre's correspondence has not been introduced.

THE COURT: The next item is 20,659, boiler conveyor.

MR. WILLIAMS: We concede the item except the amount.

THE COURT: What amount do you admit.

MR. WILLIAMS: Mr. Phelps says twenty-five dollars.

THE COURT: What is the actual value of it?

THE WITNESS: The actual value is \$40.50.

CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. What do you base that value on?

A. We have made a great many of them, Mr. Williams.

Q. You have made a great many of them?

A. Yes, we have. We don't make them ourselves; they are made by a boiler maker and we get bids on them. We sent this out to at least three boiler makers. The boiler makers are the Eau Claire Boiler Works and the Diamond Boiler Works at Minneapolis—

Q. (Interrupting) What is this thing like?

A. It is a pan about twelve and a half or thirteen inches wide that has twelve inch bars along through; it is equipped with this hopper in the bottom of it, is what we call a hopper or spout or chute that throws the sawdust over in to the Dutch oven. The sides are quite high.

Q. How high?

(Testimony of J. W. Hubbard.)

A. About three feet.

Q. And how wide?

A. About thirteen inches wide.

Q. And about how long?

A. Well, the extra boiler would require perhaps about ten or twelve feet of it.

Q. And made of tin?

A. Made of sheet iron.

Q. Any top to it?

A. Yes, there is a top to it.

Q. Then, it is entirely rectangular?

A. It is not. The top of the main pan is open and up about three feet is another system of channels which carry the return chain. This is an endless chain that runs through it.

Q. This item of forty dollars include the chain?

A. The chain is not mentioned. I can't remember the details. No, it is not intended to include the chain.

DIRECT EXAMINATION—(Continued).

BY MR. McCARTHY:

Q. Take up the next item, Mr. Hubbard, 20,680, eight steel cleats, No. 181. Were they furnished in addition to the specifications?

A. Yes, that is for additional burner or conveyor.

A. And is the amount stated there, \$28.80, the reasonable value of them?

A. That is the reasonable value. That is a steel casting made in Milwaukee. We buy that in Milwaukee and they are shipped out to Eau Claire.

(Testimony of J. W. Hubbard.)

THE COURT: Where did they put the extra conveyor?

A. The burner conveyor was extended, and these extra cleats were required for that. In other words, the fire was moved apparently farther from the mill.

Q. The item there \$2.84, was the freight upon that?

A. Yes.

CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. Where is that letter of February 16th that you are referring to here as your authority for that?

A. It may be March 16th.

Q. Would this be it: "Sixty feet, seven-eighths inch chain with steel cleats?"

A. Yes, that is the order, that is the item.

Q. That order that you are referring to is this, that you sent us on March 3rd, did you not, your ideas of what was necessary to complete the bill according to contract, that had not been shipped, did you not?

A. I believe I did.

Q. And in answer to that Mr. Phelps wrote you this letter of March 16th, in which he said: (Here the letter of March 16th was read). That is the only order there was?

A. Yes, that is the order.

Q. Where did these items go or where were they used; I didn't understand it.

A. In this burner conveyor. They are the cleats that are attached to the chain. The chain, without you put on these cleats, wouldn't catch the slabs.

(Testimony of J. W. Hubbard.)

DIRECT EXAMINATION—(Continued).

BY MR. McCARTHY:

Q. 20,355.

A. There are some set collars in there, amounting in all to \$8.32, and freight \$1.50.

THE COURT: Q. What were those?

A. They were extra set collars.

CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. When were they ordered, Mr. Hubbard?

A. In that letter I believe you just read.

Q. March 16th?

A. Yes.

Q. That is something which they are calling attention to that are lacking?

A. Yes, they called them lacking in their letter, yes.

Q. And in response to that you sent them out?

A. We sent them out, yes.

THE COURT: Q. What about the chains in the same item?

A. They are extensions of chains over and above what was covered by the plans.

THE COURT: The specifications specify the length of chain, do they?

A. Yes, they specify the length of all chains in the mill.

MR. McCARTHY: Q. The items of freight, are they included

A. Yes, they are included in the invoice.

(Testimony of J. W. Hubbard.)

MR. WILLIAMS: Was all that in the same letter; was that order that you are referring to in the same letter?

A. These were ordered in your wire of the 3rd inst.

Q. That is what date, March?

A. I believe April, perhaps April 3rd.

THE COURT: This chain then was ordered to be sent in the last car?

A. Yes. "Get this in last car," is the way the telegram read.

MR. WILLIAMS: Here is a telegram of April 4th: "Chains short as follows: 30 feet, No. 104 and 104 C," is that it?

A. That is it.

MR. McCARTHY: "30 feet No. 110, 80 feet No. 75, four links No. 75 with fixtures. Be sure to have that come in last car. There may be more chain wanted to complete the mill. Important. Ship this. Advise immediately." That is the chain?"

A. Yes.

#### CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. Where was that chain used, Mr. Hubbard?

A. In the conveyer and in transfers.

Q. So that the chain would be long enough to go around the transfers or conveyors?

A. I don't know where it was used. I understand it is the conveyor chain and transfer chain, but I don't know where it was used; his telegram don't say where he was going to use it.

(Testimony of J. W. Hubbard.)

Q. It refers there to the number of specifications, doesn't it?

A. No, I believe not, unless it refers to it in the telegram.

Q. The telegram refers there: "Chain short as follows: 30 feet No. 104 and 104 C?"

A. I will show you where some of it was used.

Q. Of No. 110?

A. Yes. I don't remember that. That was perhaps used in the boiler feed conveyor.

Q. This is enough for the rollers in the neighborhood of the edger?

A. No, sir; wasn't used there.

Q. That is ten sections?

A. That is section 110—no, it is 11C chain.

Q. Where it says "30 feet 104 and 104 C, 30 feet No. 110," is that 110 chain?

A. No, no chain at all.

Q. What do these numbers refer to?

A. There is no chain at all in section 110.

Q. I understand. What do these numbers refer to?

A. That is the standard number of the chain.

Q. You don't know where that would go?

A. I don't know where that would go; that would go in the boiler feed conveyor, I am almost sure of that.

Q. You have already testified about the chain for the boiler feed conveyor?

A. Let me find if that was the kind of chain that was used on that. The 104 and 104C chain, some of it was used on the boiler feed chain conveyor, under carriage



(Testimony of J. W. Hubbard.)

tracks, takes 104 and 104C chain. The long conveyor takes 182 feet of 104 and 104C chain.

THE COURT: This chain is in addition to what was called for?

A. Yes, that is in addition.

MR. WILLIAMS: Do you know how much was put in these different shipments of the chain before that time?

A. I do.

Q. You checked all of it?

A. I did check the invoices. We bought this chain from outside.

Q. What I mean is this: Were you there when the chain was loaded?

A. I was there when the chain was received and checked the invoice.

Q. Because you have to pay for them, I suppose you never went out of Eau Claire?

A. I watched these things pretty close.

DIRECT EXAMINATION—(Continued).

BY MR. McCARTHY:

Q. Go ahead and state the additional value of this extra steel drum?

A. That is shown in our invoice. I don't think I have it at my finger ends now.

THE COURT: \$130.00.

MR. McCARTHY: Q. Was this steel drum manufactured by the McDonough Manufacturing Company or the Muskegon Boiler Works?

(Testimony of J. W. Hubbard.)

A. It was not; manufactured by the Muskegon Boiler Works.

### CROSS EXAMINATION.

BY MR. WILLIAMS:

Q. Have you ever manufactured a boiler?

A. Never did.

Q. Any experience in manufacturing boilers?

A. We have not.

Q. Do you know what it costs to manufacture boilers?

A. I do.

Q. Is that from what you pay for boilers?

A. By competitive bids from four of the leading boiler factories.

Q. This drum connection was included in these specifications that you had from the Muskegon Boiler Works, wasn't it?

A. It was not.

Q. Wasn't that connection included in that?

A. It was not.

Q. In your agreement with Phelps to put in the extra boiler, weren't you to connect that boiler up?

A. We were.

Q. You were, yes.

A. Yes.

Q. To connect it with the other boilers?

A. What was the question?

Q. You were to connect the boiler up, that is, furnish the connection for the boiler?

A. No.

(Testimony of J. W. Hubbard.)

Q. You just simply furnished the boiler and leave it standing there, were you to do that?

A. No, we were not.

Q. What were you going to do?

A. Furnish this connection right here, which we did furnish.

Q. That was your agreement with Phelps that you were to furnish that?

A. We did, when he gave the order for the extra boiler, we had to furnish a header to take the steam out of the boiler. If we had filled it without the header and it had stood there what would have been the case?

Q. The original proposition—the amount that went in the contract was for two boilers and the bushing and this header over them, the two boilers were for \$3,850.00?

A. No, that didn't include the header. There was no header included in the two boiler proposition.

Q. How were they going to connect the two boilers up?

A. By furnishing this header.

Q. That is the way the two boiler installation was to be put in?

A. Yes.

Q. But you were going to charge extra for the header, were you?

A. No, the header for the two boilers was included.

Q. But with the two boiler proposition the header was to have been furnished?

A. Yes.

(Testimony of J. W. Hubbard.)

Q. Now, the only difference between the headers in the case you have been referring to, with the two boilers and the header to be furnished with three boilers, was that it is just that much longer, the length necessary to pass over the third boiler?

A. No, that is not all.

Q. Isn't that all there is in the header?

A. It is not all.

Q. What else was there with the header?

A. The bridge—there is a pipe comes out of the boiler, that is what we call a ninety degree band, goes up to that header. With that bend is a big valve, all of which is included, with what we call a header; it is a part of the header that transmits the steam from the boiler.

Q. You have got to have that with a two boiler installation?

A. Yes.

Q. And you have got to have it with a three boiler?

A. Yes.

Q. Only the particular difference is that with the two boiler installation the length of this header is only two-thirds as long as it is with a three boiler installation?

A. Yes, it is a third longer for three boilers.

Q. And for that price of \$3,850.00 on the two boilers, it included the header over the two boilers?

A. It did not.

Q. It did not?

A. No, it didn't.

Q. How were you going to connect them up?

(Testimony of J. W. Hubbard.)

A. By buying this header or furnishing it out here, either.

Q. You expected to put it in?

A. Yes, we did put it in; didn't charge for it.

Q. And you are not going to charge for it?

A. No. Two boilers were included in the contract. We didn't make any extra charge for the header for two boilers.

Q. Now, if a reasonable price for two boilers with headers included was \$3,580.00—

A. (Interrupting). I told you the header was not included in that price.

Q. I thought you said under your contract here you were going to connect these two boilers together?

A. Yes, sir, with a header and put it in there.

THE COURT: Q. You made no separate charge for connecting the boiler with the mill proper?

A. No.

Q. You furnished that complete for \$3,850.00?

A. Yes, and then we furnished the header.

THE COURT: Q. You furnished it for nothing?

A. Yes; we didn't charge them for that; they were included in the original contract; the header was included for two boilers in the original contract.

MR. WILLIAMS: Q. And at a price of \$2,850.00?

A. No, it was not the same; it was included in the price of \$18,750.00.

Q. Yes, included.

A. But not in the price of \$2,850.00.

Q. But that price was the boiler feature of it?

(Testimony of J. W. Hubbard.)

A. Yes, that was for the boiler, without any header.

DIRECT EXAMINATION—(Continued).

BY MR. McCARTHY:

Q. That is to say, the boilers originally were figured on the Muskegon proposition, which didn't say anything or include this header?

A. They never have included them; they are a part of the piping.

Q. So when the three boiler proposition was accepted, the acceptance did not include the item of extra header; is that correct?

A. No, it was not included because it is not included with the two. The idea is that it is cheaper for us to have this header made and connect it up in Muskegon than it would have been to purchase it outside from some of these boiler makers and ship it down to Cusick, and we didn't know whether it would fit. So we instructed the Muskegon people to put them onto the boilers and fit them and when they came out they surely did fit.

MR. WILLIAMS: Q. You never had any special order for them, however?

A. No, we did not.

Q. You just simply went ahead and furnished it for the three boilers

A. Yes. The third boiler naturally had to have a header, Mr. Williams.

MR. McCARTHY: I believe we have now finished with this witness except we would like to introduce in evidence a certified copy of the lien which was filed.

THE COURT: Is that denied by the answer?

(Testimony of M. A. Phelps.)

MR. WILLIAMS: I am not certain, but I have no objection.

THE COURT: It will be received then.

MR. McCARTHY: Is it admitted that the amount of attorneys' fees asked for, in the case the lien should be granted?

MR. WILLIAMS: NO, but as far as that is concerned, I am willing to leave that matter to the court, depending upon all the circumstances.

THE COURT: Very well.

Whereupon the lien was admitted in evidence, and marked PLAINTIFF'S EXHIBIT 1, equity case.

Whereupon the following testimony was introduced on behalf of the defendant.

DEFENDANT'S CASE IN EQUITY.

M. A. PHELPS, recalled, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:

Q. Mr. Phelps, was there ever anything said to you about anything extra for steam drum by anybody?

A. No, sir.

Q. Did you ever order any extra steam drum or anything in connection with it?

A. No, sir.

Q. When, if at all, did you first know of any claim being made for an extra drum?

A. When they sent the bill in.

Q. Can you give me about the time?

A. I should say somewhere around May.

(Testimony of M. A. Phelps.)

Q. May, 1911?

A. Yes.

Q. And what, if anything, did you do with reference to disputing it at that time?

A. I think we wrote them in a general way about all the extras they rendered a bill of, and we took it up with Mr. Hubbard when he was here.

Q. Coming down to this question of the conveyer that is referred to for the lath room; what was that conveyer used for, Mr. Phelps?

A. That conveyer takes the refuse from the cut-off saw.

MR. McCARTHY: Probably it will simply matter if I cross examine Mr. Phelps in the same way Mr. Williams did Mr. Hubbard at the completion of the examination concerning each item.

THE COURT: Probably it will.

#### CROSS EXAMINATION.

BY MR. McCARTHY:

Q. You admit, Mr. Phelps, having ordered the additional boiler, do you?

A. Yes, sir.

Q. Do you know of any manner in which that boiler could be used with the steam drum as originally ordered in the contract and specifications?

A. Why, I don't know about that. It could be probably—

Q. With the additional steam drum necessary for the use of the third boiler.



(Testimony of M. A. Phelps.)

A. It would certainly be very convenient, probably necessary to complete the plant, steam plant.

Q. And the lath mill sets off on the north side, does it not?

A. Yes, sir.

Q. The slabs and refuse from the lath mill, as originally planned, were to travel by a device or conveyer, a path with a chain in it over south, were they not, and to dump into the hog?

A. Yes, sir.

Q. And the purpose of the hog was to grind up these slabs, was it not?

A. Yes, sir.

Q. And after they were ground up in the hog, where would they fall from the hog?

A. They would go into the boiler conveyer.

Q. They would fall down, Mr. Phelps, would they not, through the hog into the conveyer which stood by it, which carried sawdust and other similar stuff over into the boiler, and drops them into the boiler for fuel, would they not?

A. No, sir.

Q. Where would they go after they passed from the hog?

A. They dumped into another conveyer and then emptied into the conveyer that went to the boiler. I am inclined to think it emptied into the conveyer that emptied into the boiler.

Q. Then, as I understand it, these slabs coming south would meet, say from the lath mill, first fall into the

(Testimony of M. A. Phelps.)

hog and there were ground up into small particles or shavings and pass over into another conveyer and fall into this boiler, feed conveyer, and there are small openings in the top of the fire place which will only admit small shavings, sawdust, etc., to fall into the fire, admits quite large—

A. They run edgings through that conveyer.

Q. After the hog was taken out, would the slabs and pieces which came from the lath mill fall into and pass off over through this conveyer into the boiler room?

A. I am not positive. I think they would have to drop into the refuse conveyer from that.

Q. They would have to drop into the refuse conveyer?

A. Yes, sir.

Q. Well, then, if they had dropped originally into the hog and were ground up, would these shavings and small sawdust which you have mentioned also drop into the refuse conveyer and go up to the fire pit?

A. I am inclined to think this conveyer runs at right angles.

Q. You don't know, do you?

A. Yes, it runs over to the refuse conveyer at right angles.

Q. You mean the conveyer which takes the material from the hog, where the stuff falls down originally, that it runs right over to the conveyer which went out north and dumped into the fire pit?

A. Yes, sir.

(Testimony of M. A. Phelps.)

Q. Well, if that is true, then what was the occasion of reversing the direction—or first, I will ask you this: whether it is not true that the conveyer which was originally designed to run from and empty into this hog has not, in direction, been changed so that the chain runs the other way and carries the refuse north in the lath mill; is that correct?

A. No, sir.

Q. Isn't the chain on the conveyer, the direction of it reversed to carry back to the window or out north, at the present time?

A. No, sir.

Q. Has it ever carried it in that direction?

A. Not that I know of.

Q. Well, then, I will ask you another question: did you, or did you not, know the direction of that lath mill conveyer?

A. Well, it runs north and south; its direction is north and south.

Q. As your mill runs, does the chain in that conveyer run south or does it run north, if you know?

A. My understanding is it runs south.

Q. I will ask you this: whether or not there is not at the north end of the lath mill another conveyer running over east and emptying into the refuse conveyer?

A. Yes, sir.

MR. McCARTHY: I believe this paper might be introduced in evidence as illustrating the testimony of the witness.

(Testimony of M. A. Phelps.)

THE COURT: You can interrogate him in regard to it.

MR. McCARTHY: Q. These marks here represent the direction, easterly and westerly, of your mill, and these marks to the north of it, the location of the planer. I will ask you whether this conveyer indicated by the lines on the north of the lath mill, in what direction it runs?

A. Runs to the east.

Q. It runs to the east and empties into these lines which represent the burner conveyer out to the fire pit?

A. Yes, sir.

Q. And the material is carried in an easterly direction and empties into this conveyer, which empties out into the fire pit?

A. Yes, si.

Q. And where does the material which is in this conveyer which you have just described, where does it come from?

A. It comes from the cut-off saw that is directly over it, and I don't know but over that part that is conveying the edgings in there too.

Q. That is, the edgings in this conveyer here?

A. Yes—I dont' know whether the edgings or into this conveyer.

Q. Do you know, Mr. Phelps—

A. (Interrupting). I am not positive whether the edgings come into this or not. They may have gone right into this, directly into that. If they did go into that, then the chain was reversed to carry it this way.

(Testimony of M. A. Phelps.)

If they didn't then the edgings go right into this hopper direct. There is no way of this conveyer running north and south to take care of the edgings and sawdust of the lath cut-off saw; no possible way to get them into it.

Q. Now, assuming that this conveyer that runs in the lath mill—carries slabs in a northerly direction, there would be no place at which they could possibly be thrown except into this conveyer which you have described as running east and west and emptying into the fire pit conveyer?

A. That is all there is.

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. Mr. Phelps, with the hog left in and that conveyer system that connects with the hog there, could that in any way be arranged to take care of this refuse or the pieces from the cut-off saw?

A. It certainly could not.

RE-CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Do you, or do you not know whether the items making up the items designated here as the parts of this refuse conveyer are or are not mentioned in the forty page specification which has been submitted here?

A. I don't think that they are.

Q. They are not included?

A. I don't think so. I would not be positive about it but I don't think so. This was constructed to take care of this refuse from the cut-off saw.

(Testimony of M. A. Phelps.)

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. Referring to the next item, additional log chain, decks, and return idler, I believe you stated all of these items related to the extension of the log slip. Who laid out the log slip?

A. Mr. McIntyre measured it out.

A. Mr. McIntyre laid out the log slip.

MR. WILLIAMS: Q. And this chain that is additional, was that any more than enough to go down to the edge of the slip, or the point of the slip, as laid out by Mr. McIntyre?

A. We couldn't get that chain all in at the time that it got there on account of the high water and there was some short pieces that was left outside. It will be put in but we couldn't put it in at the time it arrived there, but it is the length of chain as figured on by Mr. McIntyre, as I remember it.

Q. What I want to get at, Mr. Phelps, is did you use a different length of chain according to the stage of the water?

A. No.

Q. Well, would you use?

A. I will qualify that a little. We couldn't put in the whole length because the water was too high at the time.

Q. What I am getting at is; when the water is high can you get along with a less amount of chain?

A. We could do that yes, certainly.

Q. Than when it is low?

A. Yes.

(Testimony of M. A. Phelps.)

Q. Did you ever give any order of any nature or kind to anyone for that chain other than may have been mentioned in your letter of December 31st?

A. No, sir.

Q. What is the fact, Mr. Phelps, as to whether or not this was any of the machinery—any member of the machinery necessary to complete the mill?

A. It certainly was.

CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Do you, or do you not, remember writing a letter of date July 18th, 1910, in which you used this language: "Heavy log jack and equipment chain for about two hundred feet of log slip."

A. I may have.

Q. You have written it?

A. Well, I couldn't say. I presume that I did. That is not the letter.

Q. Do you know how many feet of chain is designated in the specifications here for the log slip?

A. Four hundred and fifty or five hundred feet, I don't remember the exact amount.

Q. And did the chain which you asked for here, or which is mentioned here, is that chain needed in addition to the amount named—

A. (Interrupting) It took that additional amount to complete the log slip.

THE COURT: Yes, that is admitted, that it was an additional amount.

(Testimony of M. A. Phelps.)

THE WITNESS: I would like to explain. That letter is a copy of a letter we wrote—two hundred feet of log slip, you understand would not take five hundred feet—six hundred feet of chain. The log slip only goes from the mill to the water. The log deck is something like thirty feet and the pulleys and such things take up a great deal more.

MR. WILLIAMS: Q. That is, for that length, it takes more than double the amount of chain?

A. Well, from the log slip proper was two hundred feet, then beyond that would be the log deck, where it would have to go over. I think there is something like thirty-six feet, I guess, and double that, that would be seventy-two feet and in addition to that would be the shelve it has to run over and the slack.

MR. McCarthy: Why didn't you mention that in writing the letter that you sent for the chain?

A. The mill was not laid out at that time.

Q. That is to say, you did not know how near it would be placed to the river or how far away?

THE COURT: I think it is a question of law as to whether the chain is called for by the contract.

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. With reference to the freight on these different items, what is the fact as to whether or not they were shipped with the carloads or not?

A. Yes, sir, they were.

Q. And who paid the freight?

A. We paid the freight.



(Testimony of M. A. Phelps.)

Q. Do you know anything about whether this would be the proportion of the amount or not?

A. No, I do not.

Q. Now, with reference to the engine in the filing room. Did you ever give any kind of an order about that with the exception of this letter of March 16th, in which you used this language:—

THE COURT: I think that is the letter you could not find.

MR. WILLIAMS: Q. Did you ever order any extra engine?

A. No, sir.

Q. For the filing room?

A. No, sir.

Q. And what is the fact with reference to the engine furnished, whether there was any compensation in the way of deductions or otherwise?

A. No, sir—well—

Q. What I mean is to offset the additional expense for the engine?

A. No, there was no counter shafts to offset it.

Q. What I mean is this: by using the engine, was any of the other material cut out?

A. There would have to be, yes; certainly would have been one or two counter shafts.

Q. Well, did they furnish the engine

A. Yes.

Q. Was there any counter shafts or anything cut out by reason of it?

A. There certainly was.

(Testimony of M. A. Phelps.)

Q. State what they were?

A. I don't know how they could drive it unless they put that engine in. I think it would have taken two counter shafts.

Q. Two counter shafts?

A. Yes, sir, I think so.

Q. And what would be the expense of these compared with this item of engine that they have here?

A. I don't think that there would be but very little difference, if any?

#### CROSS EXAMINATION.

BY MR. McCARTHY:

Q. For freight on these carload shipments, did you, or did you not, deduct the item of freight for any one of these extras?

A. No, sir; I don't think so. In fact, I know that we did not.

Q. Well, have you paid these items of freight?

A. Yes, sir.

Q. On these extras?

A. Yes.

Q. What have you done with those two counter shafts which you mentioned were to be omitted from the order by the installation of the engine in the filing room?

A. What have we done with them?

Q. Yes.

A. They never come. I don't know.

Q. Well, are they all in this mill now?

A. No, sir.

(Testimony of M. A. Phelps.)

Q. Well, how do you designate them; how can you point them out? Take the specifications will you, and point them out?

A. I can't point them out because the driving apparatus of the filing room machinery was not itemized there.

Q. Well, how was this filing room machinery to have been driven originally?

A. Well, that was left open. And this letter was shown here. I wrote them at one time about it and simply suggested that an engine might be as cheap as the counter shafts to drive it, and I don't think we had any reply whatever to that except they sent the engine and I supposed they had taken my ideas about the matter that it would be as cheap.

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. Mr. Phelps, about this nigger bar; did you ever order that?

A. No, sir.

Q. How did it happen that you got an extra nigger bar?

A. Well, it was shipped without any order whatever.

Q. At your request at any time?

A. No, sir.

Q. Did you know it was coming?

A. No, sir.

Q. Did you, after it came, take it up with anyone?

A. I took it up with Mr. McIntyre.

(Testimony of M. A. Phelps.)

Q. And what, if anything, happened in taking it up with Mr. McIntyre?

A. I told him it was there and was not ordered and it was a convenient thing to have on hand and that we—

Q. (Interrupting) It was a second one, was it, an extra?

A. Extra nigger bar, yes.

Q. Did you have any use for it at that time?

A. Not at that time, no.

Q. Well, did you make any arrangement with him about the question of price?

A. I asked him what one would cost at the factory, and he said it would cost seventy-five dollars and we kept it and he gave us credit to that extent and the freight on it.

Q. What is that?

A. We got a credit for that seventy-five dollars and freight on it.

Q. The freight of \$12.90?

A. Somewhere around there.

#### CROSS EXAMINATION.

By Mr. McCARTHY:

Q. When did that nigger bar arrive?

A. Well, I can't say just when, what car it came on, I am sure. It came with the saw—the two came together, the one that went with the nigger and this extra one.

THE COURT: Is there any reference to that in the correspondence?

(Testimony of M. A. Phelps.)

MR. WILLIAMS: No, I think not; I do not think it is referred to in the correspondence.

MR. McCARTHY: All we have is a letter from Mr. McIntyre which is not in the evidence. I guess that is about as far we can go on that.

DIRECT EXAMINATION—(Continued).

MR. WILLIAMS:

Q. This next item referred to is one box, number 24, 3 $\frac{7}{8}$  inches, McIntyre's letter 2-28-11, and freight on same. Do you know what that is?

A. Yes.

Q. What is it?

A. Mr. McIntyre was down there and we showed him where there was a defect in the plans of the mill, which necessitated this extra box, and he conceded that that should be furnished by them, and I presume that he ordered it. I don't know; we may possibly have ordered it.

Q. Something necessary to install the machinery?

A. Yes, sir.

Q. Could it be gotten along without?

A. No, sir. There was a post put in in such a position that it was absolutely necessary to have this extra box.

CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Do you know whether that post was placed there in accordance with the plans and specifications?

A. I believe so, yes.

(Testimony of M. A. Phelps.)

Q. Do you know?

A. I didn't put the post there.

Q. How do you know; maybe the post was out of place is the reason this extra box was necessary?

A. There was no change made in the foundation plan or the concrete piers.

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. On this boiler pan, do you know what the value of that pan is; have you had any experience in that?

A. I might have had some experience; I can't tell right down close.

Q. State to the court what the size of it was?

A. It would be a pan—the pan perhaps would be about eight or ten feet long; I think twelve inches across the bottom and the sides about eight inches. That was built up on light angle iron legs and this pan set up about three feet above the top of the dutch ovens, and in between the bottom of this pan and the top of the dutch ovens I guess there was a couple of pieces of angle iron for the return chain to ride on.

Q. Have you ever had any experience in buying these pans?

A. Not that particular kind or size; I have bought similar goods to that.

Q. Well, from your experience in buying similar goods what would you say would be the reasonable value here of that?

A. I would say the iron could be bought here for twenty dollars.

(Testimony of M. A. Phelps.)

CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Did you ever buy any boiler feed conveyer pans?

A. Not like that.

Q. Did you ever buy one?

A. I don't know whether I have or not. I may have.

Q. You don't know then how much they cost?

A. No, I do not.

Q. You never purchased one?

A. Not exactly like that, no.

Q. Well, what kind did you; you mean not exactly like that; what kind of a feed conveyer pan did you purchase?

A. I don't remember about that.

Q. You never bought one, did you?

A. Not like that, no.

Q. I am asking you what kind, then, if you did buy some kind?

A. Well, I bought pans of similar nature to that, probably would be about the same value.

DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. The next item, eight steel cleats, number 181, in the specifications, do you know what that is?

A. Why, that would be cleats for the refuse conveyer.

Q. And what was the occasion of those cleats? I see it refers to your order as being this one of March 16th? Did you give any order other than that?

(Testimony of M. A. Phelps.)

A. Not that I know of.

Q. What are those cleats for?

A. They are attached to the chain that runs to the refuse conveyer.

Q. And what was the occasion for those eight steel cleats?

A. There was not enough to complete it.

Q. Well, was there enough to go around the conveyer as it was laid out by the McDonough people?

A. No.

Q. Did you extend the conveyers or make them any longer than laid out by the McDonough people?

A. Not that I know of.

Q. Did you, or did you not, order the additional chain for that conveyer?

A. I think that there was not enough chain to go around.

#### CROSS EXAMINATION.

BY MR. McCARTHY:

Q. Well, was that amount which was not sufficient to go around the burner conveyer, amount in addition to that specified in the specifications?

A. I dont' know about that; there was not enough to go around it as they laid it out.

#### DIRECT EXAMINATION—(Continued).

BY MR. WILLIAMS:

Q. This next item now refers to idler and tightener, per your letter of March 13th, and it also refers to shafts and upright blocks, etc. Where did they go?



(Testimony of M. A. Phelps.)

A. I think that that was used to take up the slack, if I remember right, in the burner conveyer.

Q. And what was the occasion for your calling attention to that in this letter of March 16th?

A. Well, it had not been furnished.

Q. And was that necessary in order to complete it so as to operate it?

A. It was in constant trouble without it.

Q. Did you give any order other than this one of March 16th.

A. I don't think that I gave any order except the one; I presume that is the 16th.

CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Can you find that item in these specifications?

A. I don't know whether I can or not.

Q. You haven't seen it in there, have you?

A. I don't remember.

DIRECT EXAMINATION (Continued)

By Mr. WILLIAMS:

Q. The next item is some set collars. Were they ever ordered with reference to your wire of the 3rd; do you know what that was?

A. There was some set collars lacking.

Q. Was it anything additional to what had been ordered originally?

A. It was not.

Q. What was the occasion for calling their attention to that, if you did call their attention to that?

(Testimony of M. A. Phelps.)

A. I understood that this set collar was checked out short.

CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. Is it or is it not a fact that you had some set collars left over after your mill was in operation?

A. I am inclined to think we bought some here in Spokane.

Q. Can you identify the type of set collar manufactured by the McDonough Manufacturing Company?

A. I can't without comparing them.

Q. What was the purpose of having these additional set collars?

A. Well, they was——

Q. (Interrupting) Why didn't you use them?

A. I am not positive we ordered additional ones; may have, but I know that they checked short on some set collars.

DIRECT EXAMINATION (Continued).

By Mr. WILLIAMS:

Q. Regarding the item of chain, thirty feet number 104, and 104C chain and thirty feet 110 chain. Where did that chain go?

A. I can't tell by the numbers.

Q. Do you remember what it was for; whether it was for the purpose of taking up the conveyors—you spoke a little bit ago about some chain being short?

A. I think this is the chain on the hog slip.

Q. Do you know where this chain went?

(Testimony of R. J. Bond.)

A. There was chain short on the refuse conveyor; there was not enough chain to go around.

Q. And was that as planned by the McDonough people, the refuse conveyor?

A. Yes.

Q. And was there any more sent at any time than to go around the conveyor?

A. I dont' think so; might have been a link or two; half a dozen links.

Mr. McCARTHY: No cross-examination.

Mr. WILLIAMS: Q. The next item refers to 80 links, 75 link belt chain, is that the same situation?

A. Same situation.

Witness excused.

R. J. BOND, recalled, testified as follows:

DIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. Mr. Bond, with reference to this conveyor that is referred to there and the hog that has been mentioned with it. What machine did that feed or carry the refuse away from?

A. The last mill, do you mean?

Q. Yes.

A. It took the edgings or the butts and sawdust from the last trimmer and also other refuse from the last mill into the burner.

Q. Did the conveyor that was established in connection with the hog, did it take care of that or would it take care of it?

A. No, sir.

(Testimony of J. R. Bond.)

Q. Would it with the hog in place?

A. No, sir, not at times, when the hog was shut down.

Q. Could you make any connection or anything of that nature between this cut-off saw and the refuse conveyor; I mean the conveyor to the hog?

A. There might have been a connection made, but at the same expense.

Q. What would have to be done?

A. A similar conveyor would have had to be put in, in some manner.

Q. Another conveyor?

A. Yes.

Q. I want to ask one general question about all of these: Did you personally give any order for anything?

A. No, except I made out the specifications for this new conveyor and I believe a letter was produced here that I wrote. If there was not, I will acknowledge a letter in which I suggested that this conveyor going into the burner——

Mr. WILLIAMS: Yes, that is in evidence.

#### CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. This chain in the last mill conveyor which carries the slabs along into the hog, ran in a southerly direction or directly towards the fuel conveyor, did it not?

A. No, sir.

Q. What direction does it now run?

A. North.

(Testimony of J. R. Bond.)

Q. What was the purpose of reversing the direction of it?

A. To clear the edgings from the floor; but I might say that it is not now used that way. We used the edgings direct into the back conveyor from the bolter.

Q. Is it not a fact that you wrote in that letter something to this effect, that you have made no provision for taking care of the slabs from the lath mill and that they are falling onto the boiler feed conveyor?

A. I believe something like that.

Q. Now, that was a fact, wasn't it, whether you have written it or not?

A. Yes, sir.

Q. Then, with the hog taken out, then those slabs would fall directly onto the conveyor and be carried over to the sawdust, as the lath mill was planned?

A. Yes.

Q. And then you claim you reversed the direction of this and it threw them out of the window?

A. We could take them and throw them out of the window if we didn't use them.

Q. They would fall right close to the window on the north side

A. Yes.

Q. And you would have to take them and throw them out?

A. Yes.

Q. So in order to make provisions, to prevent them falling on the floor, this additional conveyor was put in and used in order to keep them from falling on the

(Testimony of J. R. Bond.)

floor, carried them over and dumped them onto the refuse conveyor?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

#### REDIRECT EXAMINATION.

By Mr. Williams:

Q. Mr. Bond, was the matter of power, the question of power, ever decided upon for the engine room; I mean in the specifications; is there anything in the specifications showing the power for the filing room?

A. No, there is nothing in the specifications.

Q. By using the engine for the filing room, was there any compensation to the McDonough Manufacturing Company in the way of cutting out shafting or anything of that kind?

A. They could have used something else, yes.

Q. Was the plan of that ever devised?

A. It was never submitted to me.

Q. Can you turn to what it says here in the specifications about the filing room?

A. There is nothing mentioned in regard to it.

Q. Is there anything else that you say other than these countershafts, pulleys and so forth?

A. No.

#### RE-CROSS-EXAMINATION.

By Mr. McCARTHY:

Q. What would be the value of the stuff that was left out?

(Testimony of J. R. Bond.)

A. I can't give any estimate on that, without drawings and plans and figures on it.

Q. A counter consists of a shaft upon which a pulley is attached?

A. Yes, sir.

Q. Something of that sort?

A. Yes.

Q. And there was one or two of them that would not be necessary?

A. Well, I think there would be at least two of these unnecessary.

RE-REDIRECT EXAMINATION.

By Mr. WILLIAMS:

Q. I will ask you generally as to these different lengths of chain that have been specified here. What is the fact as to whether without them there was enough chain to go around the conveyors that were supplied by the McDonough people?

A. There were not.

Q. Was it all needed for that purpose?

A. Well, with the exception of a very few links.

Q. How many would you say?

A. Well, I would say perhaps twenty-five extra links is all.

Q. What would be the value, according to this list of these twenty-five links?

A. I am not familiar with that list.

Witness excused.

Endorsements: Statement of facts.

Filed July 3, 1912.

By F. C. NASH, *Deputy*. W. H. HARE, *Clerk*.

No. 1577.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

MEMORANDUM OPINION.

McCarthy & Edge, for complainant.

Danson, Williams & Danson, for defendant.

RUDKIN, District Judge. This is a bill in equity to foreclose a materialman's lien for the balance due on the purchase price of certain sawmill material furnished by the complainant to the defendant. The case involves questions of fact only, and I deem it sufficient to state my conclusions with sufficient certainty to enable counsel to prepare a decree in accordance with my decision.

The first item is one of \$1601.25, which was originally allowed as a credit in this case, but was later interposed as a counterclaim in favor of the defendant in a law action heretofore tried before a jury. The item is therefore allowed.

The next three items are for \$2918.75, \$130.00 and \$43.00 for extra boiler, and extra steam drum, and extras for increasing the length of breeching. It is not claimed that the cost of equipping or installing the third engine was greater proportionately than the cost of



equipping the other two, and I will therefore allow on these three items the sum of \$2675.00 only.

The next item of \$46.13 for an extra pump is allowed.

The next three items of \$41.60, \$68.73 and \$28.68 for extra material used in conveyor for lath room and for freight thereon are allowed.

The next four items of \$71.25, \$64.80, \$4.04 and \$18.90 for extra chain and equipment for increasing the length of the log slip, are allowed, together with the item of \$33.60 for freight thereon.

The defendant ordered the engine for the filing room, assuming that it would cost no more than the appliances provided for in the original contract, and I must assume that the complainant furnished the same with that understanding. This item is therefore disallowed.

The next item of \$129.80 for one nigger bar was furnished without any order therefor and the testimony shows that it was agreed between the defendant and the complainant's representative that a charge of \$75.00 would be allowed therefor. This item is therefore allowed in the sum of \$75.00, as well as the freight item of \$12.90.

The next two items of \$5.90 and \$2.25 are disallowed.

The next item of \$40.50 for a boiler and conveyor pan is allowed in its entirety.

The next two items of \$28.80 and \$2.84, as well as the items under No. 20,355, are disallowed for the reason that it appears that these items were furnished under a claim on the part of the defendant that they were covered by the original contract and they were furnished in obedience to a demand based upon that claim.

The items under No. 20,679 for the sums of \$8.32, \$1.50, \$17.40, \$24.00, \$2.20, \$0.50, \$9.90, \$2.20, \$0.50, \$0.75 and \$28.80 are allowed.

I will say by explanation that I have allowed the claims for extras for the conveyor for the lath room and for the increased length of the chain for the logging slip upon the ground that the materials for these are specifically set forth in the general specifications and the extras thus furnished are not covered by the general provision at the end of the contract or specifications to the effect that the specifications were intended to include any member of the machinery to complete the mill found lacking under any other general provision of the contract.

The total amount allowed is \$4865.55, to which interest will be added at the legal rate from the date of filing the lien, August 21, 1911, amounting to \$194.62, or \$5060.17, to which will be added \$500.00 as attorneys' fees under the state statute.

Endorsements: Opinion.

Filed April 20th, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

DECREE.

This case came on to be heard at this time, and was argued by counsel, and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows:

That the complainant, the McDonough Manufacturing Company, a corporation organized under the laws of the State of Wisconsin, with principal place of business at Eau Claire, Wisconsin, and a resident, citizen and inhabitant of said place, do have and recover of and from the above named defendant, the M. A. Phelps Lumber Company, a corporation organized under the laws of the State of Washington, with principal place of business at Spokane, Washington, and a resident, citizen and inhabitant of said place, in the sum of Six Thousand Nine Hundred Ninety-seven and 34/100 Dollars (\$6997.34), together with Five Hundred Dollars (\$500.00) attorney's fees, and making a total of Seven Thousand Four Hundred Ninety-seven and 34/100 Dollars (7497.34), together with costs taxed at 25.06 Dol-

lars, and making a total, including said costs, of the sum of -----

----- Dollars, with interest thereon at six per cent per annum from date hereof until paid, and that said defendant is personally liable for the judgment of the whole thereof, and that said plaintiff has a valid lien upon the hereinafter described real property, and each and every part thereof, for the payment of said judgment and costs.

And it is further ORDERED, ADJUDGED and DECREED that if said sum of money, with accruing interest and costs of this case be not paid or caused to be paid by said defendant within twenty days from the date hereof, that then and in that event, said real property above referred to and hereinafter particularly described, or so much thereof as may be necessary, be sold to the highest bidder for cash, in accordance with law and the rules and practice of this court by the United States Marshal of and for the District Court of the United States for the Eastern District of Washington, Northern Division, and that said sale shall be at public auction at the Court House of the county in which said property is situated, to-wit: at the Court House of Pend Oreille County, State of Washington, after giving thirty days' notice by advertisement once a week for four successive weeks, and that complainant or any other party to this action may become purchaser at said sale, and that said sale be in bar and free of all right of equity of redemption in said defendant, save the right of redemption allowed by the laws of the State of Washington in like cases.

And it is further ORDERED, ADJUDGED and DECREED that said plaintiff have judgment against said defendant for any balance that may be found due over and above the proceeds of sale of said premises above referred to, and hereinafter described, and that execution may issue therefor.

The real property above referred to, and to which plaintiff's lien attaches, and which is hereby ordered to be sold, is more particularly described as follows, to-wit:

Lots One (1), Two (2), Three (3) and Four (4). and Lots Nine (9), Ten (10), Eleven (11) and Twelve (12), of Block Two (2), and Lots Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10) and Eleven (11) and Twelve (12), of Block Three (3), all being of the original Townsite of Cusick, Stevens County, Washington (now Pend Oreille County), and also vacated portions of Riverside Avenue and D Street of said townsite, contiguous to said above described lots, and also Lot Two (2), of Section Thirty (30), Township Thirty-three (33), North, of Range Forty-four (44), E. W. M., Stevens County, Washington, and also that certain strip of land lying between said above described property and the bank of the Pend Oreille River.

Done in open court this 25th day of April, 1912.

(Signed) FRANK H. RUDKIN,

*Judge.*

Endorsements: Decree.

Filed April 25, 1912.

WM. H. HARE, *Clerk.*

By FRANK C. NASH, *Deputy.*

No. 1577.

## IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

## ASSIGNMENTS OF ERROR.

And now on this 24th day of June, A. D. 1912, came the defendant by its solicitors, Messrs. Danson, Williams & Danson, and says that the decree entered in the above cause, on the 25th day of April, 1912, is erroneous and unjust to defendant.

FIRST: Because under the allegations of the bill of complaint, and under the evidence, a right of lien did not exist for any of the amounts claimed in the bill.

SECOND: Because if a right of lien exists for any of the amounts claimed in the bill, the amount awarded in the decree was much greater than the amount proved, for which a lien exists.

THIRD: Because the court had no jurisdiction or authority to award attorney's fee as allowed in the decree, no right of lien existing.

FOURTH: Because in the claim of lien on which the action was based, but \$5882.63 was claimed, and by the decree the court has sought to enforce the lien for much more than claimed in the lien.

FIFTH: Because no authority existed for the entry of judgment in any amount greater than that for which the lien could be enforced, and the lien was not enforceable in any amount.

SIXTH: Because the Court failed and refused to allow any portion of the counter claim or cross-complaint of the defendant, and under the evidence such counter claim and cross-complaint were established.

SEVENTH: Because the Court, in entering the judgment and decree allowed, as shown by the opinion, an item of \$1601.25 not claimed in the lien.

EIGHTH: Because the Court, at or after the time of the signing of the decree, without notice to defendant, and without any motion therefor, made an order purporting to amend the complaint and amend the lien notice and caused the same to be filed as of date April 17, 1912.

NINTH: Because the Court made an order amending the lien notice increasing the amount claimed.

(Signed) DANSON, WILLIAMS & DANSON,  
*Attorneys for Defendant.*

Endorsements: Received a copy of the within assignments of error at Spokane, Wash., this 24th day of June, 1912.

(Signed) McCARTHY & EDGE,  
*Solicitors for Complainant.*

Assignment of of Errors.  
Filed June 24th, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

No. 1577.

## IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

PETITION FOR APPEAL AND ORDER ALLOWING APPEAL.

*To the Hon. Frank H. Rudkin, District Judge:*

The above named defendant, feeling itself aggrieved by the decree made and entered in this cause on the 25th day of April, 1912, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith, and it prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, and your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made, and desiring to supersede the execution of the decree, petitioner hereby tenders bond in such



amount as the Court may require for such purpose and prays that the allowance of the appeal and a supersedeas be issued.

(Signed) DANSON, WILLIAMS & DANSON,  
*Solicitors for Defendant.*

The petition is granted and the appeal is allowed and shall operate as a supersedeas upon the petitioner filing a bond in the sum of \$9,000.00, with sufficient sureties, to be conditioned as required by law.

(Signed) FRANK H. RUDKIN,  
*Judge.*

Endorsements: Petition for appeal and order allowing appeal.

Filed June 24, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, M. A. Phelps Lumber Company, a corporation, duly

organized and existing under and by virtue of the laws of the State of Washington, as principal; M. A. Phelps and Netta Phelps, his wife, and Quincy D. Chapman, unmarried, as sureties, acknowledge ourselves to be jointly indebted to the McDonough Manufacturing Company, a corporation, appelle in the above cause, in the sum of \$9,000.00.

CONDITIONED THAT WHEREAS, on the 25th day of April, A. D. 1912, in the District Court of the United States, for the Eastern District of Washington, Northern Division, in a suit pending in that Court, wherein McDonough Manufacturing Company, a corporation, was plaintiff, and M. A. Phelps Lumber Company, a corporation, was defendant, numbered on the equity docket as No. 1577, a decree was rendered against the said M. A. Phelps Lumber Company, and the said M. A. Phelps Lumber Company, having obtained an appeal to the United States Circuit Court of Appeals, and filed a copy thereof in the office of the Clerk of the Court, to reverse the said decree, and a citation directed to the said McDonough Manufacturing Company, a corporation, citing and admonishing it to be and appear at the session of the United States Circuit Court of Appeals, the Ninth District, to be holden in the City of San Francisco, of the State of California, on the 24th day of July, A. D. 1912, next.

Now, if the said M. A. Phelps Lumber Company, a corporation, shall prosecute its appeal to effect and answer all damages and costs, if it fails to make its appeal

good, then the above obligation be void, else to remain in full force and virtue.

(Signed) M. A. PHELPS LUMBER COMPANY,

By M. A. PHELPS,

(CORPORATE SEAL.)

*President.*

(Signed) M. A. PHELPS,

(Signed) QUINCY D. CHAPMAN,

*Sureties.*

The above and foregoing bond is hereby approved this 24th day of June, A. D. 1912.

(Signed) FRANK H. RUDKIN,

*Judge.*

Endorsements. Bond on appeal.

Filed June 24th, 1912.

WM. H. HARE, Clerk.

By F. C. Nash, *Deputy.*

*Copy Affidavit of Service.*

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No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY,  
a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,  
ation,

*Defendant.*

## CITATION (LODGED COPY.)

*UNITED STATES OF AMERICA to McDonough Manufacturing Company, a Corporation, and Mc-CARTHY & EDGE, Your Solicitors, Greeting:*

YOU ARE NOTIFIED that a certain case in equity in the United States District Court, in and for the Eastern District of Washington, Northern Division, wherein McDonough Manufacturing Company, a corporation, is complainant and M. A. Phelps Lumber Company, a corporation, is defendant, an appeal has been allowed the defendant therein to the Circuit Court of Appeals for the Ninth District. You are hereby cited and admonished to be and appear in said Court at San Francisco, California, 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Hon. Frank H. Rudkin, Judge of the United States District Court for the Eastern District of Washington, Northern Division, this 24th day of June, A. D. 1912.

(Signed) FRANK H. RUDKIN,

(SEAL.)

*Judge.*

Citation: Lodged Copy.

Filed June 24, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

No. 1577.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant.*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

ORDER.

Now, on this day this matter coming on for hearing, on motion and application of complainant for an order amending forthwith, by interlineation paragraph 8 of amended complaint, to read as follows:

8. "That on account of the performance by complainant of said contract, and of the alterations so made, and of the sale and delivery of said additional machinery, there became and was due and owing to complainant the sum of twenty-two thousand four hundred ninety-eight 97-100 dollars (\$22,498.97); that said defendant has paid in money and by way of payment of freight the sum of ten thousand five hundred fourteen and 75-100 dollars (\$10,514.75), and that defendant has executed and delivered to complainant its promissory note for the sum of four thousand five hundred and 24-100 dollars (\$4,500.24), and that there became and was owing complainant on June 14, 1911, and at all times subsequent thereto, a balance of seven thousand four hundred eighty-three and 98-100 dollars (\$7,483.98), and pay-

ment of which said defendant has failed, neglected and refused to make.”

And likewise amending the prayer thereof in such manner that the sum of seven thousand four hundred eighty-three and 98-100 dollars (\$7,483.98) is substituted therein for and instead of the sum of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63).

And it appearing to the satisfaction of the Court that the demand in the original complaint was framed upon a basis of an offer and tender to defendant of a credit and off-set of one thousand six hundred one and 25-100 dollars (\$1,601.25).

And it appearing further that said defendant refused to accept said tender credit as an off-set on the contract in course of action described in said amended complaint, and that said defendant in open court elected and chose to take and receive said credits or such other, lesser or greater sum of credit to which it might appear that said defendant became entitled in the premises as and for an off-set against other obligations due from defendant to complainant, to-wit: as an off-set upon the promissory note above referred to and to the payment of which said note said defendant was authorized and permitted and asserted said credit as aforesaid.

And the Court having heard said motion and statements of counsel, and being advised in the premises,

It is hereby ordered that said motion be, and the same is hereby granted, and that the lien of said plaintiff be amended in such manner as to include said judgment.

Done in open court this 15th day of April, 1912.

FRANK H. RUDKIN,  
*Judge.*

Endorsements: Order amending amended bill of complaint.

Filed April 15th, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy Clerk.*

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No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant.*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

MOTION AND AFFIDAVIT.

Defendant, M. A. Phelps Lumber Company, on the attached affidavit made a part hereof, moves the Court as follows: To vacate and set aside a certain purported order bearing date April 15, 1912, and purporting to have been filed in this cause on the 15th day of April, 1912, and purporting to amend the bill of complaint and the lien notice, for the reason that no notice of the application for said order was ever given defendant or its attorneys, and defendant and its attorneys never appeared on any such hearing, and for the further reason

that no facts exist authorizing said order, and for the further reason that said order was, in fact, made at a date later than April 25, 1912, and was made on a much later date than April 15, 1912, and was never filed until a date much later than April 15, 1912, and after April 25, 1912.

(Signed) DANSON, WILLIAMS & DANSON,  
*Attorneys for Defendant.*

UNITED STATES OF AMERICA,

State of Washington,

County of Spokane—ss.

JAS. A. WILLIAMS, being first duly sworn, on oath says: That he is one of the solicitors for defendant above named and makes this affidavit on its behalf; that affiant has at all times been the solicitor representing defendant, who has had charge of this litigation on its behalf; that no application for the said order bearing date April 15, 1912, and purporting to have been filed on the same date, was ever made, and no notice of such an application was ever given defendant or its solicitors, and the said defendant and its solicitors were not represented or present at the time any such order was made; that no such order had ever been made up to April 25, 1912, but that at some time subsequent to the time last mentioned, the date of which is to affiant unknown, the said order was filed and defendant and this affiant had no knowledge of same at any time until mention was made thereof to affiant by Joseph S. McCarthy, solicitor for complainant, which suggestion was made about two weeks prior



to this date; that thereafter affiant examined the files of the clerk of this court and found the said order.

(Signed) JAS. A. WILLIAMS.

Subscribed and sworn to before me this 24th day of June, 1912.

(Signed) O. G. FOLLEVAAG,  
*Notary Public for the State of Washington, Residing at  
Spokane.*

Endorsements: Received a copy of the within notice and affidavit at Spokane, Wash., this 24th day of June, 1912.

(Signed) McCARTHY & EDGE,  
*Solicitors for Complainant.*

Motion to set aside order amending amended bill of complaint and affidavit.

Filed June 24, 1912.

WM. H. HARE, *Clerk*

By F. C. NASH, *Deputy.*

No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

AFFIDAVIT.

STATE OF WASHINGTON,

County of Spokane—ss.

Joseph McCarthy, being first duly sworn, on oath deposes and says: That he is one of the solicitors for the above named plaintiff, and makes this affidavit on its behalf; that affiant has at all times been the solicitor representing said complainant, who has had charge of this litigation on its behalf.

That on April 15th, 1912, trial of that certain action, entitled McDonough Manufacturing Company, a corporation, plaintiff, vs. M. A. Phelps Lumber Company, a corporation, defendant, being action No. 1586, was commenced, and the trial of which said cause of action continued for five days and until April 20th, 1912, and at the commencement of the trial of said action it was agreed between plaintiff and defendant that the testimony taken therein should be considered as being submitted in open court before Judge in the above entitled cause, being Equity Case No. 1577 of said Court.

That on the third day of the trial of said law action, to-wit on April 17th, 1912, it appeared that said defendant was claiming and asserting a credit to which it alleged itself to be entitled, amounting to the sum of sixteen hundred one and 25-100 dollars (\$1,601.25).

And it appearing to the satisfaction of the Court that the answer and cross-complaint in said equity case and said law case were practically the same, and that said defendant in each of said actions was claiming and asserting itself entitled to said credit, and it appearing that said plaintiff was willing that said defendant be given and credited with said sum in either of said actions, or such lesser or greater sum to which said defendant may prove itself entitled;

And that the complaint in said equity case was prepared by allowing and tendering to the defendant the credit of said sixteen hundred one and 25-100 dollars (\$1,601.25), and that said defendant on said 17th day of April, 1912, elected and chose to take and receive said credit of sixteen hundred one and 25-100 dollars (\$1,601.25), or such other lesser or greater credit as it might be shown that defendant became entitled to, as and for a credit upon said law case, to-wit: as a credit upon the said promissory notes, and that the plaintiff, upon said election by said defendant then and there asked that the pleadings in said equity case be amended in such manner as to permit the plaintiff to withdraw said tender and credit of sixteen hundred one and 25-100 dollars (\$1,601.25), and pray for judgment for a demand increased by the sum of sixteen hundred one and 25-100

dollars (\$1,601.25), which said permission was orally given then and there by the Court to the complainant.

That thereafter, and on or about April 23rd, 1912, affiant and James A. Williams, as attorney for defendant, were present in Court for the purpose of procuring the signing of the decree in said equity case.

That for said purpose affiant had prepared and served two forms of decrees. That said attorney for defendant then and there urged certain objections to each of said forms of decrees, and thereupon the Court made suggestions as to matters which should be contained in said decree, and that by mutual agreement it was agreed that affiant should prepare a new form of decree and submit same for the consideration of the Court on April 25th, 1912. That at the time of the presentation of said forms of decree, on said 23rd day of April, 1912, the Judge of said Court suggested that the order amending the pleadings in said action be reduced to writing and presented for his signature. That affiant, at the time of preparing said revised form of decree, prepared also a form of said order in accordance with the suggestion of the said trial, and that on said day, or the day following, served upon said attorney, James A. Williams, said proposed form of decree and said proposed form of said order; that at the time of said service said Attorney Williams read over said papers, and each of them, and stated to affiant that he objected to that portion of said proposed form of decree which recited that the sale of said premises should be made en bar of equity of redemption, and stated to affiant that if said Williams was not present at the time of the presentation of said proposed decree, that the mat-

ter be called to the attention of the said Judge, and the said Judge requested to make such alteration therein, if any, as might be proper.

That at said time said Williams also stated he did not know that he had any objection to the said proposed form of order, but stated that if objection thereafter occurred he would be present at the time said proposed form of decree and proposed form of order were presented on said 25th day of April, 1912, for the signature of said decree.

That at 9:30 o'clock A. M. on April 25th, 1912, in accordance with said agreement affiant appeared before the Judge of said Court and presented said proposed form of decree and order, stating to said Judge the objection to which said Williams asserted to said proposed form of decree, and stating also that said Williams had stated to affiant that he, Williams, would be present at said time should he desire to make any objections to said proposed form of order. That said Judge thereupon amended by interlineation said proposed form of decree, and then and there signed same, and that affiant is unable to state whether or not said Judge did or did not at said time sign said proposed form of order, but that same as signed and filed is identical with the copy served as aforesaid upon said James A. Williams on or about April 23rd, 1912.

That affiant makes this affidavit in rebuttal of affiant filed herein of said James A. Williams in support of motion to set aside and vacate order filed herein, amending pleadings as aforesaid.

(Signed) JOSEPH McCARTHY.

Subscribed and sworn to before me this 24th day of June, 1912.

(Signed) A. A. KIRBY,  
*Notary Public in and for the State of Washington, Residing at Spokane.*

Endorsements: Copy received June 24th, 1912.

DANSON, WILLIAMS & DANSON,  
*Solicitors for Defendant.*

Affidavit of Joseph McCarthy.

Filed June 24, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant.*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

STATE OF WASHINGTON,

County of Spokane—ss.

AFFIDAVIT.

JAS. A. WILLIAMS, being first sworn, on oath says: That he is one of the solicitors for defendant in this action; that he has read the affidavit of Joseph S. McCarthy of date June 24, 1912, in opposition to defendant's motion

to vacate the purported order of June 15, 1912; that this defendant denies that any credit of \$1,601.25 was tendered as alleged in said affidavit in this case, and denies that this defendant on April 17, 1912, or at any time, elected to choose, take or receive said credit of \$1,601.25, or any other sum as and for a credit upon the law case or otherwise, except that this affiant admits that he did consent to complainant amending one paragraph of the bill of complaint so as to admit a less amount of credit than was conceded therein; denies that complainant at any time asked leave to amend the complaint in this case except to change the amount of credit alleged in one of the paragraphs of the complaint so as to be \$1,601.25 less, or that any order was made therefor; denies that there was ever served on this affiant said order of May 15, 1912, and denies that this affiant at any time stated that he had no objection to any such proposed order, or that he might not have any objection to any such proposed order, and denies that this affiant stated that if he had any objection he would appear at any time or place where said order was to be presented; denies that this affiant had any knowledge that said order was to be presented on April 25, 1912, or at any other time.

JAS. A. WILLIAMS.

Subscribed and sworn to before me this 24th day of June, 1912.

O. G. FOLLEVAAG,  
*Notary Public for the State of Washington, Residing at  
Spokane.*

Endorsements: Received a copy of the within affidavit at Spokane, Wash., this 24th day of June, 1912.

McCARTHY & EDGE,  
*Solicitors for Complainant.*

Affidavit of Jas. A. Williams.

Filed June 24th, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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No. 1577.

IN EQUITY.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

ORDER DENYING MOTION TO VACATE  
ORDER OF APRIL 15, 1912.

This cause coming for hearing this day on the motion of defendant to vacate and set aside an order dated April 15, 1912, and bearing the Clerk's filing mark of April 15, 1912, whereby certain amendments to the bill of complaint and lien notice were made, complainant appearing by its attorneys, Messrs. McCarthy & Edge, and defendant appearing by its attorneys, Messrs. Danson, Williams & Danson, the Court having heard the arguments of counsel and considered the affidavit of Jas. A. Wil-



liams in support of and the affidavit of Joseph S. McCarthy against, and the above affidavit of Jas. A. Williams, and being advised in the premises,

IT IS ORDERED that said motion be and the same is hereby denied.

Done in open court this 24th day of June, 1912.

(Signed) FRANK H. RUDKIN,  
*Judge.*

Endorsements: Order denying motion to vacate order amending amended bill of complaint.

Filed June 24th, 1912.

WM. H. HARE, *Clerk*

By F. C. NASH,

*Deputy.*

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No. 1577.

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

PRAECIPE.

*To the Clerk of the Above Entitled Court:*

You will please prepare transcript of appeal to the Circuit Court of Appeals upon the following, to-wit:

Amended bill of complaint.

Defendant's demurrer to amended bill of complaint.

Order overruling defendant's demurrer to amended bill.

Subpoena with return of service.

Amended answer and cross-complaint.

Replication.

Testimony of E. L. Kelley.

Testimony of J. R. Bond.

Testimony of A. T. Brown.

Testimony of John D. Chickering.

Testimony of James Hubbard.

Testimony of J. W. Hubbard.

Testimony of John McLeahany.

Testimony of M. A. Phelps.

Testimony of J. Simonds.

Testimony of E. N. Shoemaker.

Testimony of A. W. Rogers.

Testimony of W. D. Starbird.

Testimony of E. W. Harris.

Testimony of J. F. Sexton.

Opinion by the Court.

Decree.

Petition for appeal, with order allowing appeal and fixing supersedeas.

Assignment of Errors.

Bond.

Citation on appeal and proof of service.

Order amending amended bill.

Motion to vacate order amending amended bill and affidavit in support thereof.

Affidavit of Joseph S. McCarthy in opposition to motion to vacate order amending amended bill.

Affidavit of James A. Williams in response to affidavit of Joseph S. McCarthy.

Order denying motion to vacate order amending amended bill.

The exhibits admitted in evidence, except those of which originals are ordered sent up.

Praeceptum for record.

Order directing original exhibits to be sent up on appeal.

DANSON, WILLIAMS & DANSON,  
*Attorneys for Defendant.*

Endorsements: Service of the within praecipe accepted at Spokane, Wash., this 24th day of June, 1912.

McCARTHY & EDGE,  
*Solicitors for Complainant.*

Filed July 3rd, 1912.

WM. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

It appearing to the Court that certain exhibits introduced in evidence in above case and necessary to be before the Court on Appeals are in such form that it is for

the best interest of the parties hereto, as well as for the Court, to have same sent to the Circuit Court of Appeals in original form without having the same printed.

It is therefore by the Court ordered that the following original exhibits introduced in this case be sent to the Circuit Court of Appeals without being printed, to-wit: Exhibits Nos. 7, 20, 40, 41, 73, 74, 101, 102, 103, 104, 105, 106, 107, 108 114, 120, 121, 122, 123, 128.

Dated this 29th day of June, A. D. 1912.

(Signed) FRANK H. RUDKIN,

*Judge.*

Endorsements: Order directing original exhibits to be sent up.

Filed July 3rd, 1912.

WM .H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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PLAINTIFF'S EXHIBIT 1.

McDONOUGH MANUFACTURING COMPANY, a  
Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corpora-  
tion,

*Defendant.*

NOTICE OF CLAIM OF LIEN.

NOTICE IS HEREBY GIVEN that on January 30th, 1911, the above named claimant, the McDonough Manufacturing Company, a corporation organized under the laws of the State of Wisconsin, commenced the furnishing of material, consisting of machinery complete

for single band mill, with bolts, bar iron necessary for transfers, conveyors and log jacker, steam piping and two sets of saws, and other like machinery, iron fittings and fixtures, at the request of and for the use and benefit of the said M. A. Phelps Lumber Company, a corporation organized under the laws of the State of Washington, with principal place of business at Spokane, Washington, upon that certain land and premises situated in Pend Oreille County, State of Washington, and described as lots one (1), two (2), three (3) and four (4), and lots nine (9), ten (10), eleven (11) and twelve (12) of block two (2), and lots five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11) and twelve (12), of block three (3), all being of the original townsite of Cusick, Stevens County, Washington (now Pend Oreille County), and also vacated portions of Riverside Avenue and D Street of said townsite, contiguous to said above described lots, and also lot two (2) of section thirty (30, township thirty-three (33) north, of range forty-four (44), E. W. M., Stevens County, Washington, and also that certain strip of land lying between said above described property and the bank of the Pend Oreille River, and which said material was to be used, and all of which was used upon said premises in the erection thereon of a saw mill, and all of which said tract is necessary and convenient for the use of said building and improvement; and all of which land is in Pend Oreille (formerly part of Stevens) County, Washington.

That the said M. A. Phelps Lumber Company is now, and at all times herein mentioned has been the owner

and reputed owner of said land, building and premises.

That the furnishing of said material ceased on May 24th, 1911.

That the reasonable value and agreed price of said material so sold and delivered was and is the sum of twenty-two thousand four hundred ninety-eight and 97-100 dollars ( \$22,498.97).

That the sum of twelve thousand one hundred sixteen and 10-100 dollars (\$12,116.10) has been paid in money and in just credits allowed to said M. A. Phelps Lumber Company, and that for the sum of four thousand five hundred and 24-100 dollars (\$4,500.24) thereof said corporation has executed its five certain promissory notes dated respectively March 10th, 1911; May 17th, 1911; May 24th, 1911; April 20th, 1911, and May 19th, 1911, and made payable to claimant, and delivered same to claimant, and that there remains due and owing to claimant on account of said sale and delivery, and in addition to said promissory notes, the sum of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63), and upon all of which said latter sum interest is due from May 24th, 1911.

That claimant claims a lien upon said building, land and premises for the sum of five thousand eight hundred eighty-two and 63-100 dollars (\$5,882.63), with interest thereon from May 24th, 1911, together with claimant's cost of preparing and filing this lien, and costs and disbursements and attorneys' fees for foreclosing the same. McDONOUGH MANUFACTURING COMPANY, a Corporation.

(Signed) By J. W. HUBBARD.

*President.*

STATE OF WISCONSIN,  
County of Eau Claire—ss.

J. W. Hubbard, being first duly sworn, on oath says :  
That he is the president of the above named corporation,  
and makes this verification for and on its behalf ; that he  
has read the foregoing claim, knows its contents, and  
that he believes the claim to be just.

(Signed) J. W. HUBBARD.

Subscribed and sworn to before me this 14th day of  
August, 1911.

(Signed) JOSEPH C. CULVER,  
*Notary Public for Wisconsin, Residing at Eau Claire.*

Notary Public, Eau Claire, Wis. My commission ex-  
pires March 7, 1915.

(SEAL.)

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CERTIFICATE OF COPY.

STATE OF WASHINGTON,  
County of Pend Oreille—ss.

I, H. H. Murray, duly appointed, qualified and acting  
Auditor of Pend Oreille County, Washington, do hereby  
certify that the foregoing NOTICE OF CLAIM OF  
LIEN is a true and correct copy of an instrument appear-  
ing of record in my said office in Book 1 of NOTICES  
OF MECHANICS' & OTHER LIENS, at Page 13.  
That said instrument was filed for record in my said  
office at 8 o'clock and 40 minutes on the 21st day of Au-  
gust, 1911.

In Witness Whereof, I have hereunto set my hand

and affixed my seal of office this 10th day of April, A. D. 1912.

(SEAL.) (Signed) H. H. MURRAY,  
*County Auditor of Pend Oreille County, Washington.*

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DEFENDANT'S EX. 8.

Spokane, Wn., Sept. 21, 1910.

*McDonough Manufacturing Co., Eau Claire, Wisconsin.*

Gentlemen: We have not as yet received the plans and detailed specifications for the saw mill which we are building at Cusick. Your representative was in the office at one time while the writer was out of town, but has not returned, and we do not know his address. As there are several matters which we wish to take up, we wish you would wire him instructions to call on us, as we wish full detailed specifications and working plans as soon as possible. Also we wish to take up the matter of four boilers instead of two, that we had up with your Mr. Hubbard when he was here.

Kindly give this matter your immediate attention.

Yours truly,

M. A. PHELPS LUMBER COMPANY.

By (Sgd.) M. A. PHELPS, *President.*

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DEFENDANT'S EX. 9.

Eau Claire, Wis., U. S. A., Sept. 30th, 1910.

*M. A. Phelps Lbr. Co., Spokane, Wash.*

Gentlemen: Replying to yours of the 27th inst. we are sorry we were unable to mail you the plans and detailed specifications before this time, but we have been unusually busy in our drafting room on account of the



two orders the writer received at Spokane and another for a complete saw mill here in our own state, which came in while I was absent, thereby causing an unusual amount of work at one time, which I did not take into consideration when I last talked with you.

We have finished up the drawings of upper and lower floor and the timber elevation, also plan of the concrete piers, and expect to mail all of them this evening and are now enclosing you, under separate cover, the blue print showing the concrete piers so that you can get started on this part of the work. This will enable you to make all the preparations necessary for going ahead with the work, and you will have balance of prints within the next day or so, together with the specifications.

Regarding the boilers, we have had this matter up with the boiler people and so far have not gotten down to a satisfactory basis in the way of the changes necessary in the equipment originally specified and one that will now be required. We expect, however, to have the matter entirely straightened out within the next two or three days and will then write you fully. From present indications, it looks as though the price for the additional equipment would just about equal the price originally quoted.

Immediately upon receipt of your letter, we wired our Mr. McIntyre to call on you, which we hope he will do during the afternoon or tomorrow, and no doubt he will leave you his permanent address so you can reach him at any time. You will have everything complete in the way of plans and specifications within a day or so from the time you receive this letter.

With kind personal regards from the writer, we remain,

Very truly yours,

McDONOUGH M'FG. CO.

By (Sdg.) J. W. HUBBARD, *Pres't.*

Encl.

DEFT. EX. 11 ADM.

NIGHT LETTER.

Oct. 13, 1910.

*McDonough Mfg. Co., Eau Claire, Wisconsin*

The plans and specifications are very incomplete. Many sections left out and many others reduced in weight and dimensions. We wish you to immediately authorize your Mr. McIntyre to go to Cusick and, together with Mr. Bond, make a complete survey of the mill ground and authorize him to make complete plans and specifications covering mill, log slip, sorting works, engine and boiler house. We also wish, as soon as these plans and specifications are complete, to have a contract drawn covering all these points and according to our understanding with your Mr. Hubbard. It is absolutely necessary that no time be lost, as it will be impossible to get timber for the new cut this season unless order is placed at once.

M. A. PHELPS LUMBER CO.

DEFENDANT'S EX. 12.

Eau Claire, Wis., U. S. A., Oct. 12th, 1910.

*M. A. Phelps Lbr. Co., Spokane, Wash.*

Gentlemen: Your night letter of the 10th inst. was received at our office yesterday morning, but was not re-

plied to on account of the writer's absence from the city. I have this A. M. checked over the specifications and drawings which we sent you on Oct. 3rd, and find that these were sent practically or, I might say, entirely in accordance with the understanding we had when I was at your office. You advised me that time that you wanted to get started on your timber work and mill building before the cold weather set in, and requested that we get out this part of the information at the earliest possible moment. We therefore did not go into details of the filing room machinery, saws, bolts, bar iron, engine or boilers, to start off with, but wanted to get the saw mill proper straightened out so that you could get the timbers ordered.

I have checked over the timber elevation this A. M. and cannot see that it does not cover everything you require for getting the timbers out. It shows all the principal timber dimensions; in fact, as much as we have ever shown on a timber elevation, and your millwright should have no trouble in taking off his timber bill; the upper floor plan is just the same as the one we checked over when I was at the mill, except that it is more detailed. We cannot see where any changes are to be made in it.

Referring to the lower floor plan, it was understood with you that this would be drawn up according to the very best practice as we understand it and submitted for your approval. If you now have any suggestions as to changing the arrangement of the conveyors or something of that kind, it will be an easy matter for you to advise us, but any adjustments or corrections to be made

in the plans as we have submitted them, can be easily straightened out now upon receipt of your instructions.

We cannot understand how anything in connection with upper and lower floor plan will have any effect on the timber work. All of the posts and bents are located and the concrete pier plan shows the arrangement of the piers.

We will send you a night letter today to this effect, but will expect to have a letter from you within a few days, confirming your telegram and explaining just what exceptions you take to the plans. I have looked them over and checked them back on original specifications left with you and cannot find that any sections were left out with the exception of the hog, which is an error on our part and which is shown on plan as Sec. No. 132 and will of course be included in the specifications.

We are sending our Mr. McIntyre a copy of this letter and writing him fully today and will also wire him tonight and are mailing you under separate cover, another set of timber settings No. D-47/3 and D-47/4 on which we have shown more of the details of the timber sizes.

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) J. W. Hubbard,  
Pres't.

DEFENDANT'S EX. 13.

NIGHT LETTER.

Eau Claire, Wis., Oct. 12th, 10.

*M A.. Phelps Lbr. Co.,*

Empire State Bldg., Spokane, Wash.

Your night letter 10th mailed complete, plans timber elevations, foundation plan 3rd inst. intended to cover only saw mill proper to enable you get your building started. Will mail balance specifications within a few days, cannot mail boiler room information until boiler equipment decided, will make shafts by 16ths instead of 8ths if desired. Writing fully today.

McDONOUGH MFG. CO.

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DEFENDANT'S EX. 14.

12:58 a. m., 13th lo.

TELEGRAM.

Cincinnati, O., Oct. 14, 1910.

*M. A. Phelps Lbr. Co.,*

Empire State Bldg., Spokane, Wn.

Have wired McIntyre to draw plans and specifications according to understanding.

McDONOUGH MFG. CO.,

————— J. W. Hubbard.

DEFT. EX. 15. ADM.

October 13, 1910.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your wire received, and we have wired you today as follows:

“Wire received. Unsatisfactory. If you cannot authorize your Mr. McIntyre to proceed to Cusick and make plans and specifications for mill according to our understanding with your Mr. Hubbard and have a contract drawn covering our understanding with him you may cancel the order for machinery. If we do not hear from you by noon the fifteenth we shall consider the order cancelled. Your Mr. McIntyre is here at this writing.”

In looking over the specifications which you sent we find that there are so many changes between that and the other specifications, and so many items left out, that they really constitute no specifications whatever. And the plans we would consider very defective, except possibly the foundation plans.

We feel that we cannot wait longer on this proposition, as the mills will shut down in the very near future and we will be unable to get timber before spring.

It was our understanding that the memorandum of contract which we agreed to was only preliminary and that there would be a contract drawn covering all the points and according to our understanding with your Mr. Hubbard.

We hope to hear from you tomorrow in answer to our wire, but if we do not satisfactorily we shall be obliged to cancel the contract.

We presume that you have heard that it will be necessary to build the power plant on the opposite side of the

mill from what was at first planned, on account of the lay of the ground.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
(Sgd.) By M. A. Phelps,  
President.

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DEFT. EX. 16. ADM.  
TELEGRAM.

Spokane, Wash., Oct. 13, 1910.

To McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Wire received. Unsatisfactory. If you cannot authorize your Mr. McIntyre to proceed to Cusick and make plans and specifications for mill according to our understanding with your Mr. Hubbard and have a contract drawn covering our understanding with him you may cancel the order for machinery. If we do not hear from you by noon the fifteenth we shall consider the order cancelled. Your Mr. McIntyre is here at this writing.

M. A. PHELPS LUMBER COMPANY.

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DEFENDANT'S EX. 17.

Eau Claire, Wis., U. S. A., Oct. 24th, 1910.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

The writer has been out of the city for several days and on his return finds your favor of the 19th. I am very sorry to know that I misunderstood Mr. Bond and hope

that the matter as I have put it to you, has been forgotten by this time.

Regarding the specifications as submitted to you after my return here, I will state that this was intended more as a copy of the shop order which would go to our Supt. as mentioned to you when I last saw you and was not intended to be as complete a specification as the one I left with you for the reason that they contained a great deal of descriptive matter more on the order of the catalog or I might say the circular, bringing out the principal points of interest in our machinery, a good deal the same as a salesman would do in endeavoring to secure the order, but you will realize of course that it will not be necessary to go into all this detail in our machine shop specifications to our superintendent or instructions, as he is very familiar with machinery and all he would need to know is a general statement of the size and style of machinery required or covered by the order that is what we intended by the specifications sent you. The one I left with you would cover in a very fair manner, the details as suggested above. With this explanation we believe you will readily understand that it is not our intention to in any way cut down the quality of machinery or the specifications. This would have been fully understood and made clear to you upon receipt of your approval of the main drawings, at which time we would have sent you all the detailed blue prints. We have however, written our Mr. McIntyre and you, quite fully on this subject and trust now that everything is fully understood between us and the writer wants to personally assure you that he, as well as each member of our firm, is very



much interested in your order and that it is our intention to give you an equipment that will fully come up to your expectations. We desire to co-operate with you in every desirable way to make the mill the greatest possible success. It is indeed to our interest as much as yours, to have it so, and you can rest assured we are always glad to receive or give any suggestions in connection with this building.

With kind regards to yourself and Mr. Bond, I remain,

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.

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DEFT. EX. 18. ADM.

October 19, 1910.

McDonough Manfg. Co.,

J. W. Hubbard, President,

Eau Claire, Wisconsin.

Dear Sir:

Your letters of October 14th received, and in reply to same, would say, that you are in error in regard to our Mr. Bond, as he knew nothing about the contract you were making until I told him day before yesterday.

We presume that you have heard before this from your Mr. McIntyre regarding the matter, and we can only say that the specifications were in such variance with our understanding and former agreement that there was hardly any comparison. Many items were entirely left out and others changed in regard to dimensions, some as much as three-eighths of an inch in diameter of

shafting, and the drawings for the framing of the mill were in such shape that no mechanic could possibly build the mill without making changes which we would not consider for a minute, as we wish to put the mill up according to your plans without any changes being made except with your consent.

We presume that Mr. McIntyre will have the new plans and specifications ready within a day or two.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

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DEFENDANT'S EX. 19.

November 4, 1910.

McDonough Mfg. Co.,

J. W. Hubbard, President,

Eau Claire, Wisconsin.

Dear Sir:

Your several letters and telegrams which we have received from you in the last week or so have caused us to believe that you do not understand the contract in the way that we do.

If you will remember, at the time you were at Cusick we took up the matter in the presence of Mr. Bond, and roughly speaking, the contract would be as follows: You were to furnish the mill complete including everything that went into the construction of the mill in order to put it into operation, with the exception of nails and spikes. That is, it was to include all bolts, steam piping, valves, in fact everything, as I have stated, in the way of metal

that was necessary for the successful operation of the mill and ready to turn the steam on, with the exception of belting.

Also, you were to furnish a competent man to superintend the installation of this machinery.

By the tenor of some of your letters and telegrams we see that you do not take the same view of this that we do, and we wish it cleared up immediately, as the preliminary contract that we signed was only preliminary until the regular contract was executed covering all of these points, and, if you will remember, it stated that the specifications were to be subject to our approval.

Also, you were to furnish us working plans for the building of the frame, including bill of lumber. So far we have received only very crude tracings of the mill plan, and no specifications of any account at all, and we must ask you to wire us immediately on receipt of this clearing up this matter, and we must have detailed specifications with working drawings and a contract covering same in accordance with our conversation regarding same.

In this matter we do not wish it understood as criticising your Mr. McIntyre in any way, but if this matter is delayed any longer it will be utterly impossible for us to have a frame erected this fall or winter, in which case we would not want the machinery delivered to us before May or June.

If you cannot satisfy us on these points and get us these working plans at once we must cancel this order. Please give it your immediate attention.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

DEFENDANT'S EX. 21.

Eau Claire, Wis., U. S. A., Nov. 21st, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

As requested by you when the writer was in Spokane, we had the foundation bolts and washers sent out on a car with the Dalkena machinery which left here on the 17th inst. We have written the Dalkena people today that you would call for this material.

While in Spokane, I also wired our office to mail you a blue print of our engine templet both right and left-hand, as I did not believe you had decided up to that time which hand you would use. If you have any preference in regard to this, wish you would advise us as early as possible or advise us if you prefer to have us draw this in in the best manner in connection with the boiler and engine room.

Everything pertaining to the engine is out now with the exception of the bed, this being the only piece that is made right or left-hand.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard, Pres't.

(Copy) Attached to Exhibit 21.

“Attention Mr. Callan.”

Nov. 21st, 1910.

Muskegon Boiler Works,  
Muskegon, Mich.

Gentlemen:

In further reference to your proposition No. 1371, on two boiler equipment for the M. A. Phelps Lbr. Co., Spokane, Wash., to be delivered at Cusick, Wash., the writer has just returned from a trip to Spokane in connection with this order and while there Mr. Phelps decided that he would install three boilers instead of two, definitely giving up the four boiler proposition.

We therefore wish that you would send us by return mail, a proposition on a three boiler installation, boilers to be of same size and type as formerly quoted on including the same number of fittings, proper size stack, to be set at one side of the boiler house allowing the usual distance from the side of the outside boiler to center of stack, sufficient to allow a person to pass between the boilers and the boiler house wall, stack to be built up of No. 8 for the lower half and No. 10 for the upper half, all fittings, grate bars, boiler fronts and other castings necessary for the boilers.

Please make this proposition in triplicate so that we may send one copy to the M. A. Phelps Co., one to our western representative, Mr. McIntyre, and one for our own files.

Anything you can do to hurry this proposition to us

will be appreciated as we cannot determine the arrangement of the boiler house plant until we hear from you.

Very truly yours,

McDONOUGH M'F'G. CO.

BY-----

DEFT. EX. 22. ADM.

December 1, 1910.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your letters received.

Regarding the engine, would say that I am positive that it will be a right hand engine, and you may figure that way unless we advise you by wire in the next two or three days.

Regarding the boiler proposition, we will take it up with your Mr. McIntyre as soon as he returns from the coast, which we understand will be the first of the week.

Regarding the shipment of machinery, we would say, that you can make up a car at your convenience of the transmission or any of the other machinery, but would like to have you include the bolts and washers, and iron for the conveyors, etc., if possible, with the first car, and you could probably make the second car as soon as you have the engine in shape to ship.

Please ship via C. & N. W. and N. P. to Rathdrum, Idaho, and I. & W. N. to Cusick, Wash.

Yours truly,

M. A. PHELPS LUMBER CO.,

(Sgd.) By M. A. Phelps,

President.

DEFENDANT'S EX. 23.

Eau Claire, Wis., U. S. A., Dec. 5th, 1910.

M. A. Phelps, Pres't.,  
Spokane, Wash.

Dear Sir:

We are glad to receive your letter of the 1st giving us the hand of the engine also instructions to commence shipping as soon as we can have a car ready. We have considerable machinery work along at different stages, although no particular section completed, but will follow your wishes in regard to the order of shipments, getting you up a car of the transmission machinery within the next few weeks. We also have a good deal of the engine cast and part of the machine work done, so it is possible we will make this the second car. We will also make it a point as you wish, to include as many of the bolts and washers and as much of the bar iron as possible in the first car.

We understand from Mr. McIntyre that he would be back in Spokane last Friday and we suppose has seen you by this time. We would suggest that you discuss the boiler proposition thoroughly with him and if any suggestions are to be made, advise us as early as possible so that the whole matter can be put up to the boiler people in a definite form.

During the time the writer was at Spokane, the Rose Lake Lbr. Co., to whom we previously sold two bills of machinery, one of them being their complete mill at Rose Lake, had up the matter of purchasing machinery to double the capacity of their plant and are pleased to advise you now that although we were not represented on

the ground, they forwarded us their order for all the machinery they will require, including one of our new band mills the same as yours, a new trimmer, live rolls, carriage, steam feed, deck machines, etc. This order coming to us by wire without a representative on the ground, we think speaks pretty well for the machinery and treatment these people have received from us and with your mill and the Dalkena and others we have gotten out there, is going to give us some of the most up to date and finest single band mills in operation in your territory.

We also are pleased to follow out your instructions regarding the routing of the machinery by the C. & N. W., C/O N. P. and I. & W. N.

With kind personal regards from the writer, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

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DEFENDANT'S EX. 24.

Eau Claire, Wis., U. S. A., Dec. 27th, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

We have yours of the 24th inst. instructing us to use pulleys instead of the gears in the angle conveyor.

It seems you misunderstood our statement in regard to the change in the burner; what we endeavored to say



was you originally planned on using a closed burner either water jacket or brick lining; in that case the location of the conveyor would have been different, but the idea of changing to the open fire pit has necessitated the changing of the angle of the conveyor. This matter, however, is now entriely straightened out and we will ship the pulleys with the balance of machinery.

We are getting the first car pretty well ready and expect to forward same within the next week or ten days.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,  
Pres't.

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DEFT. EX. 25. ADM.

January 9, 1911.

McDonough Mfg. Co.

Eau Claire, Wisconsin.

Gentlemen:

We enclose blue print of the position which our boilers will occupy, and have sent one to the Muskegon Boiler Works and written them as follows:

“We enclose blue prints showing the position in which our boilers will be set. Please get out the setting plans and forward them as soon as possible. Also, please inform us about what time you expect to make shipments.”

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,  
President.

DEFT. EX. 26. ADM.

McDonough Mfg. Co.

January 10, 1911.

Eau Claire, Wisconsin.

Gentlemen:

The matter of routing the machinery seems to be somewhat complicated. Two of the railroads claims that I have given both of them the routing from the factory to the transfer. If it is possible I have, it is a mistake.

We will leave it to you on the routing of this machinery, but would think it advisable to have it routed from the transfer via Northern Pacific.

There would be no objection to giving the Milwaukee a part of the routing to the transfer if they did not haul it the rest of the distance, but there would be some danger if they got hold of it that they would take the long haul, which would delay it, on account of this part of the road being new and not tried out.

Please advise about the date that you will make the first shipment.

We will write you in a day or two, giving the make of the saws which we would prefer.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

DEFENDANT'S EX. 27.

Eau Claire, Wis., U. S. A., Jan. 16th, 1911.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

Replying to yours of the 10th inst., we will perhaps

route the machinery out of here via the C. & N. W. Ry. C/O the N. P. at Minn. Tr. to be sure you will get the most direct service. We will watch the shipments very closely to see they go forward without any unnecessary delay and expect to get out the first car about Thursday of this week; after the first car moves, the balance will follow along as fast as you will require it.

Hoping that everything is going along nicely with you at the new mill, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

COPY ATTACHED TO EXHIBIT 27.

Jan. 16th, 1911.

Muskegon Boiler Works,

Muskegon, Mich.

Gentlemen:

We have your favor of the 13th referring to the blue print the Phelps Lbr. Co. recently sent you. We are inclined to believe they do not know the dimensions of the standard sawdust feed openings in your oven tops when they show the 16" dimensions and as nothing was said in our contract with them with reference to changing any of your standards, we believe you will be perfectly safe to figure on the 12". We have, however, written the Phelps Lbr. Co. today as per copy enclosed.

Very truly yours,

Pres't.

COPY ATTACHED TO EXHIBIT 27.

Muskegon, Mich., Jan. 13th, 1911.

McDonough Mfg. Co.,

Eau Claire, Wis.

Gentlemen:

Enclosed please find copy of letter written the Phelps Lbr. Co. of even date. In regard to the drawing showing location of boilers in power plant referred to in their letter, we note they give a dimension of 16" as diameter of the sawdust feed openings in the oven tops. Our standard patterns and castings are for a hole 12" in diam and if they insist upon having 16", it will be necessary to charge them for the extra pattern work, etc., to furnish the 16" size. We have not written them anything in regard to this, taking it up with you first. Will you please advise in regard to this matter.

If it is within your power to determine the size of this opening, we trust our 12" standard casting will be all right as this is the size we have always furnished and it has proven to be large enough.

Kindly let us hear from you by return mail and oblige,

Very truly yours,

MUSKEGON BOILER WORKS,

————— R. E. Ashley.

DEFT. EX. 28. ADM.

January 16, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your letter received.

You doubtless have received the blue print showing

the plan of the power house which we sent you some time ago.

We have the mill all under cover and sided up, also log slip, but have done nothing with the power house, as we think it better to have the boilers set first.

We think that Mr. Kelly made an error in regard to the refuse conveyor to the burning pit, as Mr. Bond informs me that it can come out from the mill at right angles instead of on an angle.

We shall be ready for machinery as soon as you can get it here.

If you know of a 16-inch automatic engine in first class condition, please advise use what it can be secured for to be shipped with other machinery.

Regarding further the matter of routing the machinery, would say, that the soliciting agents of the railroads are all anxious to secure the shipment. We will leave it entirely to you, as we have told them, but, as we said before, should prefer to have the long haul come from the transfer over the Northern Pacific, as they, we think, would be more likely to have it arrive promptly, but you can do as you please regarding that matter.

Regarding the power for the filing room, we would suggest that it would be better to have a small independent engine rather than shafting and belting, and think it would altogether be possibly as cheap. Please give this your prompt attention and advise us regarding it.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd) By M. A. Phelps,

President.

DEFENDANT'S EX. 29.

Eau Claire, Wis., U. S. A., Jan. 24th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We are pleased to advise you that we shipped your first car of machinery yesterday as per B/L and invoice enclosed. We have included the freight in our invoice and have made arrangements with the R. R. Co. to collect the freight at destination or at Spokane. In view of this arrangement, the freight will not be paid until after the car has been delivered.

We have noted in the terms that freight cash on receipt of B/L or shipment with the idea in view that if nothing occurred to interfere with the collection at destination, that the freight would not have to be paid upon receipt of the B/L we are enclosing you, but could be paid later when shipment arrives the balance of payment as per contract, one-half cash and the balance covered by ninety day note.

We have requested the R. R. Co. to use every possible means to rush this car through and will see that they are kept reminded of it. We expect to forward your next car on the 25th or 26th. We will be able to ship the balance of machinery from now on about as fast as you will require it.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

DEFT. EX. 30. ADM.

Jany. 23, 1911.

McDonough Mfg. Co.,  
J. W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

Referring further to the matter of saws, would say, that the Washington Machinery Company of this city is extremely anxious to have us designate Atkins saws. As we are figuring on a deal with them, I dislike to turn them down flat, but said that we expected that it was so near the time of shipment that the probabilities were that the saws had been procured. Should they write you or take it up with you in any way we wish that you would simply say that other saws had been ordered to fill the order.

Another reason is that the Atkins saws in this locality are not giving satisfaction.

Please rush the machinery from now on as fast as possible, and let us hear in regard to our former letter relative to the hog.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd) By M. A. Phelps,

\_\_\_\_\_  
President.

NIGHT LETTER. DEFT. EX. 31.

Spokane, Wash., Jany. 31, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Please advise us by wire regarding the bolts for installing first car of machinery; same not included in the

invoice. We can procure them wholesale here if you instruct. Also write us immediately regarding engine for filing room. Have Muskegon people rush plans for boiler setting and also boilers themselves.

M. A. PHELPS LUMBER COMPANY.

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DEFENDANT'S EX. 32.

TELEGRAM.

Eau Claire, Wis., Feb. 1, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Bolts shipped on second car yesterday; boiler plans mailed Monday.

McDonough Mfg. Co.

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DEFENDANT'S EX. 33.

Eau Claire, Wis., U. S. A., Feb. 11th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We wired you yesterday advising that the first car of machinery had been delivered at Cusick, Wash., on the 30th ult. Accordingly we should have heard from you with a letter written last Monday. We have, since wiring you yesterday, received advice that the second car of machinery was delivered at Cusick today. You have also no doubt before this, received the B/L and invoice for the third car which is now on the way showing that we are now giving your order every preference here and will get the machinery out for you about as fast as you will be able to take care of it. We hope we will hear from



you promptly at the end of five days after arrival of each shipment with remittance in accordance with contract as we are turning the machinery out so fast now that we are naturally getting considerable money invested in the contract, having three cars out now and the fourth one about ready for loading.

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) J. W. Hubbard,  
Pres't.

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DEFT. EX. 34. ADM.

Feby. 11, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Your two wires received. We have wired you night letter as follows:

“Larger lumber firms not using Atkins saws. Should prefer either Disston or Simonds. Mailing you statement of first car today; car not delivered until fourth.”

We also herein enclose our check for \$1,173.50, also our note for equal amount, due in 90 days, and drawn in accordance with our contract.

We would say, referring further to your telegram, that this car was not set in to us until the 4th, and, not counting Sunday, it would have been due either yesterday or today, but we did not get the tally on the checking until yesterday.

We would say, however, that we paid the freight, \$633, some eight days before the contract called for it to

be paid. We did not object to paying this freight, but simply call your attention to it.

The car checked O. K. as regards the number of pieces, with the exception of one collar short, 2-11/15. Also, we noted that the tightener for the main drive is not turned up on the inside, but, if thoroughly balanced, presume is all right.

Mr. Bond has written or will write you regarding a few matters which he can explain to you better than we can.

Please rush the balance of the shipments as fast as possible.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
(Sgd) By M. A. Phelps,  
President.

MAP/GHL

encls.

P. S.—If you wish, you may state what per cent discount you will allow on these shipments if we pay all cash on arrival of the machinery, with a reasonable time for checking out.

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DEFENDANT'S EX. 35.  
NIGHT LETTER.

Eau Claire, Wis., Mar. 20, 1911.

M. A. Phelps Lumber Co.,  
Spokane, Wash.

Your lettergram received. All machinery shipped excepting engine, boilers and saws which allowing for freight and hog amount to seven thousand three hundred

leaving balance our favor when car in transit reaches you, of over twenty-six hundred not including extras, we must ask you to comply with terms written in contract. Engine and boilers will be shipped in about two weeks.

McDonough Mfg. Co.

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DEFENDANT'S EX. 36.

NIGHT LETTER.

Eau Claire, Wis., Apr. 4, 11.

M. A. Phelps Lumber Co.,  
Spokane, Wash.

Boilers go forward fifth inst.; engine, saws, pumps, chain ten days to two weeks.

McDonough Mfg. Co.

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DEFENDANT'S EX. 37.

TELEGRAM.

Eau Claire, Wisc., Apr. 20, 11.

M. A. Phelps Lbr. Co., Empire State,  
Spokane, Wash.

C. & N. W. car 52727, containing balance machinery leaves here today are tracing.

McDonough Mfg. Co.

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DEFENDANT'S EX. 38.

Eau Claire, Wis., U. S. A., Feb. 28th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

Referring to the P. S. on your letter of the 25th, we

have furnished the water pipe for all of the different machines all connected up on the machines before they leave the factory. You will notice this is true of the band mill, edger, lath machines, etc., so that in laying your water mains, hydrants, etc., you will merely have to pipe directly to the water pipes which we have already furnished.

Referring now to the steam pipes we have not arrived at any definite decision regarding the furnishing of this and are in doubt now as to whether it will be best to purchase them here shipping them out to you or have you buy them for us at the best place you can in Spokane.

Before the actual amount of steam piping can be determined it will of course be necessary that the machines be located or very nearly so, in fact this information will have to come from the mill, as it would hardly be practical to decide with any degree of accuracy regarding the lengths to be furnished, the different fittings, valves, etc. When you are far enough along with the work would suggest that you measure up as closely as possible the actual steam piping that will be required, sending us the specifications upon receipt of which we will get the best prices obtainable here and will also ask you to send out specifications for prices from some of your best dealers in Spokane. We will then make comparison and be in position to decide the pipe matter very quickly. We believe this will be the most satisfactory way to handle this proposition for all parties concerned. If you have any different suggestions will be glad to hear from you.

Hoping everything is going along nicely at the mill,  
we remain,

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) J. W. Hubbard,  
Pres't.

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PLAINTIFF'S EX. 42.

Boston, Mass., Aug. 8th, 1910.

McDonough Mfg. Co.,  
Eau Claire, Wis.

Gentlemen:

Your letters just received. In reply would say that the writer will leave for Spokane about the 24th and will be in Chicago one or two days. I can let you know before leaving just when I will be there and where I will stop.

We will place the order for the equipment shortly after my arrival at Spokane. Prices should be based F. O. B., Cusick, Wash.

Yours truly,  
M. A. PHELPS LBR. CO.  
By M. A. Phelps.

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PLAINTIFF'S EX. 43.

Boston, Mass., Aug. 22, 1910.

McDonough Mfg. Co.,  
Eau Claire, Wis.

Gentlemen:

Regarding your Mr. Hubbard meeting the writer in Chicago a/c saw mill machinery would say that I will

arrive in Chicago Thursday the 25th at 5 p. m. and can meet Mr. Hubbard at the Palmer house. As I shall probably have several matters to take up my time during Fri. & Sat. if convenient could give Mr. Hubbard Thurs. evening at the Palmer House.

I wish to say that I do not wish you to go to the expense of having Mr. Hubbard meet me at Chicago on any certainty of your getting the order as other firms are figuring on it and the proposition that looks best to me will be taken up. In any case the order will not be placed until I return to Spokane.

Yours truly,  
M. A. PHELPS, Prest.

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PLTFS. EXHIBIT 44.

November 26, 1910.

McDonough Mfg. Co.,  
Eau Claire, Wis.

Gentlemen:

Your letters received. Regarding the shafting, we can see the point that you raise, and you can use eighths instead of sixteenths under.

Please advise us at the earliest opportunity in regard to the boiler proposition.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
(Sgd) By M. A. Phelps,  
President.

PLTFS. EXHIBIT 45.

December 17, 1910.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Your letters of the 9th received.

Regarding the additional price of boiler feed pump of \$46.13, would say, that we will accept same.

Regarding the matter of the extra boiler, would say, that we accepted the proposition as stated by your Mr. McIntyre; he was to have additional contract drawn to cover the proposition, but have not seen him since.

Regarding the matter of the change in the lath machinery and the hog, would say, that this was necessitated on account of defective plans, which would necessitate the waste being carried from the machines to the conveyor. Also, the main refuse conveyor should have been nearer the river bank on account of there not being room enough between the sorting works and where the conveyor would have ended under the present plans.

In sending any communication of any kind, or any working plans, kindly mail them to the company, either at Spokane or at Cusick, as some of the plans and other information has not been turned over to us by Mr. Kelly, and we wish to know regarding those direct rather than second-handed.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. PHELPS,

President.

## PLTFS. EXHIBIT 46.

Dec. 19, 1910.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

We enclose copy of letter which we have mailed to the Muskegon Boiler Works, which will explain itself.

Regarding the heater and the trucks, will say, that you can drop that proposition, as we can secure the same cheaper here.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
(Sgd.) By M. A. Phelps,  
President.

Copy of Letter Attached to Pltfs. Ex. 46.

Spokane, Wash., December 19, 1910.

Muskegon Boiler Works,  
Muskegon, Michigan.

Gentlemen:

Copy of your letter of December 14th to McDonough Mfg. Co., received.

Replying to same, would say, that the stack must be set at the right hand side of the boilers, facing the Dutch ovens; otherwise, opposite the drawing which you sent them.

The wall of the boiler-house will be of cribbing, and the stack should be far enough away to remove any danger of fire.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
By M. A. Phelps,  
President.



PLTFS. EXHIBIT 47.

December 22, 1910.

McDonough Mfg. Co.,  
J. W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

The writer was at Cusick yesterday and checked up the work there somewhat, and came to the conclusion that we would release, for the present any way, Mr. Kelley and the men that he brought with him, as Mr. Kelley does not seem to have the work pushed in the way that it should be. And we have concluded that we will have the bridge tree work and all such work put in this winter whenever the weather is suitable, and when the machinery has all arrived put on the necessary number of millwrights and install it in short order. When that time comes if you wish to recommend some one whom you think capable of superintending the work and getting the work out of the men, we would be pleased to employ him, but while we think that Mr. Kelley is competent to do the work that he should do, yet at the same time we think that he is an extremely expensive man.

Yours truly,  
M. A. PHELPS LUMBER CO.  
(Sgd.) By M. A. Phelps,  
President.

## PLTFS. EXHIBIT 48.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your letter of December 20th at hand. Replying to same, would say, regarding the change in the main conveyor, that if you consider the corner pulleys better, instead of special gear, you may supply the pulleys instead of the gears.

Regarding the change in the burner, we would say, that we have made no change in the burner, but, as planned, it throws the burner within 20 or 25 ft. of the sorting works, which would conflict with the insurance. This is a matter which your Mr. McIntyre should have taken note of when he was there.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

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PLTFS. EXHIBIT 49.

Feby. 3, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Please add sufficient number of steel dogs for the log chain to cover the additional length of chain required.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

NIGHT LETTER. PLTFS. EXHIBIT 50.

Spokane, Wash., Jan. 24, 1911.

McDonough Mfg. Co.,

J. W. Hubbard, President,

Eau Claire, Wisconsin.

Leave out hog and transmission for driving same. Atkins people want saw order. Told them was probably placed. Reasons why could not turn them down at that time. If representative calls tell them order placed, not saying we gave you order for Disston's make.

Please crowd machinery as fast as possible.

M. A. PHELPS LUMBER COMPANY.

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PLAINTIFF'S EX. 51.

Spokane, Wash., Jan. 29th.

McDonough Mfg. Co.,

Eau Claire, Wis.

Our Preference diston but can substitute simons if advantage and let the extra distons come on our order mail cusick chain catalogue freight arrangements ok if get track of engine before last shipment advise by wire ship material for foot of slip next car also hinges.

M. A. PHELPS LBR. CO.

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PLTFS. EXHIBIT 52.

Feby. 18, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your wire was received, and we replied to the same Feby. 15th, as follows:

"Your wire received. The inducement does not seem hardly adequate. Am authorized by our board trustees to offer you cash ten days after arrival each car, less five per cent of invoice price less freight, except last car on which would require twenty or thirty days time.

Muskegon people state will commence to ship about March fifteenth. Please have them ship before if possible.

Writer going to Cusick tomorrow. Will make settlement for second car on return; arrived Cusick afternoon eleventh."

With the exceedingly favorable time to purchase timber in this country our trustees thought that your proposition for cashing the full amount of invoices was not sufficient to justify us in taking them up at the present time, as the money could be used to so much better advantage in the low priced timber that is being offered.

We enclose settlements for second car, number NP. 68978, viz: 3 mo's Note for \$842.75 and check \$842.75.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

encls

President.

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PLTFS. EXHIBIT 53.

Feby. 28, 1911.

McDonough Mfg. Co.

Eau Claire, Wisconsin.

Gentlemen:

Your several letters of recent dates recd.

Replying to the matter of saws, would say, that our

preference is decidedly for the Disstons, but if absolutely necessary in order to obtain reasonable prices, you may substitute either the Simonds or the Atkins.

The Branch saw we would not use under any conditions, and, as we said, our preference is decidedly for the Disston saw.

Regarding the matter of location of steam pipes in the boiler, would say, that the tracings which you enclosed are satisfactory, but it will necessitate a four-inch opening for the whistle pipe, and, of course, it will necessarily mean for the blow-off pipes also.

Regarding the matter of payment for this machinery, would say, that we are willing to do anything necessary or possible in the matter to assist you in marketing this paper, but, in taking the matter up with one of our stockholders, who is an officer in a local bank here, we have come to the conclusion that it would not be a business policy for us to give straight notes without some provision being embodied covering the extension, for the reason that while in all probability you could extend these notes if we requested it, at the same time conditions might arise which might make it embarrassing for us when due and presented here for payment.

You can readily see that when they pass out of your hands you have no further control over them. If you can suggest any way in which they will be more bankable we will be pleased to make the exchange and draw the new notes to conform to the exchange. Personally, I should prefer to cash these invoices as they come in, but unless there was a discount along the lines which we wired you, we could not see our way clear to do it with

the use to which we can put money in the way of buying cheap timber. We hope that this matter can be adjusted to your satisfaction.

We hope you will push the shipment of the balance of the machinery, as we are ready for it, and could be running in April if the boilers were set and the other machinery arrived.

Mr. Bond has informed us that the specifications do not cover any shaft or boxes necessary to use in connection with the tightener frame on the main drive. Please take this matter up.

Also, please advise what price you will make FOB Cusick on an extra set of saw collars for the edger, and an extra set of wood cogs and keys for the wood filled gear.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps.

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PLTFS. EXHIBIT 58.

July 18, 1910.

McDonough Manufacturing Company,

Mr. J. W. Hubbard, General Manager,  
Eau Claire, Wisconsin.

Dear Sir:

Your letter of July 13th at hand and noted.

Replying to same, would say that we are receiving bids on the equipment for a single cut band mill, to be delivered at Cusick, Washington.

The mill will consist of one eight foot heavy band, heavy carriage with head blocks to open forty-eight

inches, with and without steam set works, steam kicker, steam loader and steam nigger, a heavy fifty-four inch four saw gang edger, live rolls, four saw slasher, gang trimmer, to trim from six to twenty feet, a swing cut off saw in rolls, set of up to date filing machinery, about one hundred and fifty feet of sorting works, heavy log jack and equipment, chain for about two hundred feet of log slip.

The power plant will consist of two 72 inches by eighteen feet high pressure boilers, butt jointed, tested to 225 pounds, with a pressure of 150, together with feed water heater and pump; about one hundred feet of four foot stack. These with all necessary castings for dutch ovens, and on the boilers we wish to figure both, on the plain brick work setting and also steel cased boilers.

The engine should be 18x24, balanced valve "heavy duty" engine.

The power house will set ten feet from the main mill on the right hand side, and there should be an iron conveyor to take the saw dust from the band and other machines to the dutch ovens. There will be a burner situated about one hundred feet from the mill, and the equipment will include the necessary conveyors to this burner. The burner also will be on the right hand side of the mill and beyond the power house. The mill will be left hand and the lath machine and the sorting works will be on the right hand side of the mill also. The land is practically level where the mill will set, with the exception of the last thirty feet from the river, which pitches down, perhaps, three feet.

Several manufacturers of saw mill machinery are submitting us plans and specifications, together with prices, on this equipment and, if you feel disposed, will be pleased to have you do the same.

The writer will leave for the East in a week and, if you forward plans and specifications, together with prices, to 617 Chamber of Commerce, Boston, it might be that I could arrange to stop off at your place on my return, provided your proposition looked attractive.

I would say further that what we wish is a mill that will have a guaranteed capacity of not less than fifty thousand feet one inch lumber, ten hours. All machinery and work on same must be of the best.

Should you or your representative wish to inspect the mill site, inquire for M. John R. Bond, of Cusick, Washington, who will give them all necessary information.

Very truly yours,  
M. A. PHELPS LUMBER COMPANY,  
(Sgd.) By M. A. Phelps, President.

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DEFT. EX. 59.

Feby. 25, 1911.

McDonough Mfg. Co.,  
John W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

We enclose check and note in settlement of Car No. L. V. 29985.

This car is short two solid boxes No. 55 and two flat boxes No. 18; also the short shaft in section No. 110 is 2½ ft in length while the specifications call for 3½ ft.



It is barely possible that it can be used with the 2½ ft., but it would be crowding the pulleys too much.

We would call your attention also to the construction of the trimmer, and that is the appliance for the raising and lowering of the saws, in which there is a small leather strap and a light half circle. In our opinion this will give us endless trouble, and will ask you if you cannot furnish us some other appliance to take its place.

The other machinery seems to be in good condition so far as we are able to judge, but we would ask you, in shipping the engine, not to load it into the gondola car but on an ordinary flat car, as we have not the facilities for unloading it from the side of the gondola car without considerable trouble and expense.

We have your letter of the 22nd., and in reply to same, would say, in regard to the boiler proposition, that you are incorrect in your statement of the cost of the boilers. You have figured the freight on the additional boiler at 75,000 lbs., which is about the weight of the two boilers.

In the Muskegon proposition of Sept. 14th. they quote as on the two boilers, which we originally figured on, at \$4350 FOB Cusick, erected. And if we did the erecting, would deduct \$500, leaving it \$3850 FOB Cusick for the boilers. This price is substantially what you figured for the boilers. Taking \$4350 as a basis on the two boilers, and adding one half as much more for the other boiler, or \$2175, would bring the price to \$6525, or \$5 less than your proposition on the three boilers. Taking the two boilers without the setting at \$3850. as included in our contract, and add \$750 for the erecting and setting, would make \$2675 for the extra boiler. There

should be, however, some deductions from this, as you only figured \$450 for the erecting instead of \$750. In addition to this you would be entitled to charge as the extra cost of the piping, valves, etc., necessary to use in connection with three boilers, also an extra length of the conveyor feed pan across the extra boiler. The extra size of the feed water pump has already been arranged for. Please look this matter up and see if we are not correct in our figures.

Please give the boiler matter your immediate attention. We will advise you in regard to the boiler feed conveyor, but we feel sure that the drawings which you submitted are all right.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

encls

President.

PS.—Beg to advise that the drawings are correct.

In the matter of furnishing the steam and water pipe and fittings, please advise us by return mail what arrangements you have made or will make in regard to taking measurements and furnishing this, as we do not wish to be delayed a day when the boilers are set and we get at this work.

DEFT. EX. 60.

March 16, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Regarding the list of machinery still lacking according to your account forwarded us March 3rd., would say, that our Mr. Bond has gone over this matter, and while we would not wish to say that the following, aside from your list, is complete, still the following is what he has noted as not included in your list:

1 Duplex Boiler Pump;

60 ft of  $7/8 \times 6$  round link Chain with steel cleats;  
(No. 151), for additional burner conveyor;

75 ft of log haul chain, together with the steel dogs for same;

Conveyor to take edgings from lath mill;

And the following Iron:

*For Slasher—*

156 ft of  $3/4 \times 1/4$ , and

315 ft of  $1\frac{1}{2} \times \frac{1}{4}$ ;

3 pcs of flat carriage track for log skids, 17 ft & 4 inches long.

*For Trimmer—*

63 ft & 4 inches of  $1\frac{1}{4} \times \frac{1}{8}$  flat iron, and

98 ft of  $3\text{-}5/8 \times 1/8$  flat iron;

35 ft of 1 inch half round iron;

1200 ft of  $1\frac{1}{4} \times \frac{1}{4}$  flat iron for burner conveyor;

780 ft of  $1\frac{1}{4} \times \frac{1}{4}$  for mill conveyors;

350 ft of  $\frac{1}{4}$  flat iron, width of lumber sorting works chains;

700 ft of  $1\frac{1}{2} \times \frac{1}{4}$ ;

850 square ft., 16 gauge, sheet steel, for hoppers and chutes;

560 ft of  $\frac{3}{4} \times 3$  inch flat iron for log slip;

560 " Light T rails for return of Log chain;

Chains to raise the end of the log slip, which should be about 60 feet;

All this iron (except the sheet iron) should be drilled and countersunk.

We do not say that this is complete, but as nearly so as we could get at this time.

We think that this is a matter which your man here should have taken up before now.

The plan for the Filing Room will be satisfactory.

In addition to the above you will furnish the extra steel conveyor trough for the extra boiler, which we expect to pay for.

Regarding your invoice of Feby. 28th., of \$1923.50, we find that on going over our accounts carefully we cannot see where there is anything due you on this invoice, as you had overdrawn on former invoices.

As our account now stands, we have paid altogether, \$2432.12 in freight; \$3207 in cash, and the same amount in notes, making altogether \$8836.12.

Should we add to this the amount of your last invoice of \$1923.50, less freight of \$521.12, would make \$10,-238.50.

In addition to this you have to furnish the engine; boilers, which, under the original contract, would amount to some thirty-seven or thirty-eight hundred dollars; all of the conveyor chains and log chains; the steam

feed; all of the Filing Room machinery, including engine; a part of the lath machinery; the steam feed; the saws; and all the iron, piping, valves, etc.; which, in our estimation, would figure at least \$10,000.

So you can readily see that at the present time there is nothing due on this contract, as the original contract amounted to \$18,750, from which should be deducted around \$240 for leaving off the hog.

Kindly make shipments of the balance of the machinery immediately, as we have had to lay off our men on account of not receiving the same.

Regarding further, the matter of saws, if the Disston people have not delivered to you the extra saws that we ordered you need not ship any saws to replace that order.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

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DEFT. EX. 61.

March 30, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

The following is the material needed for the refuse conveyor for the lath room:

- 1 shaft, 2-3/16x6', K.S.;
- 1 dbl belt pulley, 40x7', bore 2-3/16, K.O.;
- 1 bevel pinion No. 73, bore 2-3/16, K.O.;
- 1 set collar, 2-3/16;
- 2 boxes, 2-3/16 (No. 12), 3/8 P.T.;

- 1 shaft, 2-7/16x38, K.S.;
- 1 bevel gear No. 72, bore 2-7/16, K.O.;
- 1 9-tooth No. 104 sprocket, No. K-11, bore 2-7/16, K.O.;
- 1 set collar, 2-7/16;
- 2 F. Boxes, 2-7/16, No. 16, 38 P.T.;
- 2 shafts, 1-15/16x2' 6", K.S.;
- 1 No. 104 Tail Idler, K-11, bore 1-15/16, K.O.;
- 2 set collars, 1-15/16;
- 2 F. Boxes, 2-15/16, No. 10, 3/8 P.T.;
- 80 ft No. 104 chain;
- 1 pulley, 16x7, bore 2-15/16, K.O.

There are also short 6 collars, 2-7/16; one collar, 2-3/16; one collar, 2-11/16; 2 collars, 2-15/16; 3 collars, 2-7/8, and shafts and boxes for all belt tightener frames.

Please get this material on the last car and ship at once.

We do not pretend to say that this is all that is short, as, according to our understanding and what you said, you was to have your representative keep track of these matters.

The car shipped the 18th arrived yesterday P. M.; have not as yet checked the same out.

Regarding your letter of the 20th., would say, with regard to the amounts paid and amounts due, that according to our account we have paid you up to date, not including freight on car No. 85658, the sum of \$8666.12. Should we add to this your invoice of the 18th, it would make \$10,589.62, leaving about \$8160 for shipments yet to come, which would, under the original contract, include the two boilers, the engine and fittings, the saws,

iron, steam and water pipe and fittings, steam pump, and driving equipment for the filing room, and some other items besides these which we have given you as above, which, according to our best information and figuring, would amount to quite the balance which would be due you.

We will settle for the last car immediately, as soon as checked out, or in the five day limit.

Regarding the matter of expense bills which you wish returned, would say, that we will return all of these soon, but we have entered a claim for overcharged freight which we wish adjusted first, so that we can get the correct expense bills to forward you, and will also remit for the difference in freight, which we undoubtedly will get.

Would say that the freight on the last car was \$739.40.

Please rush the balance of the material, together with the boilers, at once, as we are waiting for the same.

Regarding the matter of the steam and water piping, valves, etc., we wish that you would instruct your Mr. McIntyre here to attend to this matter, as we cannot stand any delay when we are ready for this material. We don't know Mr. McIntyre's address, and was to have seen him several times. Please advise us in regard to his address.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

P. S.—The iron pan for the end of the refuse conveyor is only 10 ft where it should have been 20; please also give this your attention.

DEFT. EX. 62.

April 8, 1911.

McDonough Mfg. Co.,  
J. W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

Your letter of the 5th at hand. Replying to same, would say, in regard to the notes, that we will have no hesitation whatever in accepting your guaranty that these notes would be renewed, except for the reason that should a condition arise similar to that in the Fall of 1907, it might make it impossible for you or anyone else to be able to have these notes renewed. That is the only reason we have drawn them in that way. We will say, however, that when the contract is completed we will undertake to have the whole matter adjusted in some way to your satisfaction.

We call your attention to another fact, that of the payment of the last two cars. As we wrote you, we have withheld payment on the 4th car because we considered we had overpaid the account to the extent of that car or more. The 5th car we were about to make settlement for when we received your wire that the engine and other material would not be shipped until about ten days or two weeks, which would bring it here up to about the first of May. As you well know, this machinery was to have been all delivered by the 15th of March. As the matter now stands, we are paying you interest on settlement for which we have no benefit, as we cannot complete the mill without the balance of the machinery, and we request that you push this machinery immediately,



and as soon as the shipments are made and checked out we will make settlement for the whole matter.

We call your attention, further, to the statement which you made when you were here last, and that was that the engine was about ready for shipment, and that the Muskegon people had practically finished the boilers. It seems that this could not be the case, as we received advice from them that they would ship the boilers in the first week of April, but as yet we have received no information of the shipment.

We desire to be fair in all of these matters, but you are putting us to a great disadvantage in not having this material come forward more promptly.

Yours truly,

M. A. PHELPS LUMBER COMPANY,  
(Sgd.) By M. A. Phelps,  
President.

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NIGHT LETTER. DEFT. EX. 63.

April 14, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

When you fill your part of Contract there will be no trouble about the settlements on our part according to our Contract.

If we do not receive advice that the balance of equipment is shipped by the eighteenth we shall take such action as we think best to complete our plant.

M. A. PHELPS LUMBER COMPANY.

442      *M. A. Phelps Lumber Company v.*

DEFT. EX. 64.

April 14, 1911.

Mr. Wm. McIntyre,  
East 714 Illinois Ave.,  
City.

Dear Sir:

Regarding the matter of the steam and water pipes to be furnished by the McDonough Mfg. Co. for our mill at Cusick, we wish you would take this matter up with them immediately and see if they will not authorize us to purchase these pipes and fittings at wholesale prices here and charge their account with the cost of what is used, and also for cutting and threading of the larger pipes.

Yours truly,

M. A. PHELPS LUMBER CO.,  
(Sgd.) By M. A. Phelps,  
President.

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DEFT. EX. 65.

April 17, 1911.

McDonough Mfg. Co.,  
J. W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

Your several letters of recent date at hand. There is short in chain to complete the transfers and refuse conveyors as follows:

- 30 feet 104-F and 104-C chain;
- 20 feet number 110;
- 81 links number 75; and 4 fixtures for same;

20 feet number 78 chain;  
15 feet of steeple top chain for transfer;  
15 feet of number 82 chain;

Please see that we are furnished with this at once.

Regarding the payment for the invoices which you speak of, we have figured the matter as follows: We have paid you to date, in cash, notes and freight, \$9,585.52. As near as we are able to estimate it there is still due from you machinery to the amount of \$8700; this, together with the \$9585.52, would make \$18,285.52. Your original contract, outside of the extra boiler, amounts to \$18,750, less the price of the hog, which was, as we remember, \$240.84, leaving the original contract \$18,510. As you will readily see, on this basis there is very little due you at the present time.

As you well know, this machinery was to have been all delivered at Cusick by March 15th. It is now April 17th, and the shipment has not been completed yet from the factory, so that, as the matter stands, we are paying you interest on a certain amount for which we are receiving no benefit.

We wired you the 14th that if we did not receive positive advice that the balance of the equipment was not shipped by the 18th that we would take such action as we think best to complete our plant. You can readily see that the sawing season is rapidly passing, and we have not received the necessary machinery in order to put our mill in operation.

As we stated in our telegram, there would be no trouble about the settlement when you fill your contract.

Regarding the matter of the extra boiler, as there seemed to be some difference of opinion about the price we took the matter up with the Muskegon Boiler Works and asked them what would be the right price for us to pay for the extra boiler and boiler equipment. In their letter to us they stated that the price of the extra boiler would be one half more; or, otherwise, figuring the contract price of the three boilers at \$6530 installed, and the two boilers at \$4350, it would leave the extra boiler \$2675, including the installation of the three boilers. We think that where you made the difference in figures is that you have figured your commission both ways.

We presume that you have heard from Mr. McIntyre in reference to several matters which were taken up at the mill.

We shall expect advice from you tomorrow that the balance of the equipment has been shipped.

Yours truly,

M. A. PHELPS LUMBER COMPANY,

(Sgd.) By M. A. Phelps,

President.

MAP/GHL

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NIGHT LETTER. DEFT. EX. 66.

April 19, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Advise us of shipment of balance machinery, giving car number; we will mail check for amount due on past shipments.

We have as much money tied up as you have, and are unable to get results on account of your not filling contract as per agreement.

We insist that this shipment be made immediately.

Wire us immediately on receipt of this; also instruct McIntyre to secure piping and fittings here.

M. A. PHELPS LUMBER COMPANY.

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NIGHT LETTER. DEFT. EX. 67.

July 14, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Your wire of thirteenth at hand. Replying to same would say that we are at work on your statement and expect to have it out in the next two or three days.

We have advanced your Mr. McIntyre sixty dollars some time ago, as he was entirely out of funds.

M. A. PHELPS LUMBER COMPANY.

DEFENDANT'S EX. 68.

Eau Claire, Wis., U. S. A., Apr. 17th, 1911.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

We are in receipt of a letter from our Mr. McIntyre referring to a number of items, to which we have replied as per copy enclosed. We believe that our explanation will make this whole matter clear to the people at the mill and trust that all of the parts will be found to correspond with the explanation we have given and according to the shipping manifests and original specifications. There is so much machinery

going into a saw mill before it is installed that we have found, a great many times that pieces are mislaid sometimes and do not show up for several days but think you will find everything to conform to the drawings and specifications.

Very truly yours,

McDONOUGH M'F'G CO.

By (Sgd.) J. W. Hubbard,

Pres't.

Copy Attached to Defts. Ex. 68.

April 17th, 1911.

Wm. McIntyre, Esq.,  
Spokane, Wash.

Dear Sir:

We have yours of the 13th inst. with reference to the piping for the Phelps mill and as it is now so late and the last car will leave here today or tomorrow, the suggestion you give is the only way to handle this matter now; we want you however, to see that the piping is properly ordered and that the right price is secured also that they do not put in a lot of unnecessary valves and fittings, in fact this must necessarily be kept down to a minimum. The chances are that Mr. Bond would feel, that as long as we are furnishing all the piping and fittings without a specifications, that he will want to put in a lot of special stuff and perhaps a lot of valves, which will run into considerable more money than we contemplated when we took the order.

We therefore suggest that you watch this matter very closely and when they are ready to decide on their steam arrangement, go to Cusick again and see that the

most simple method is used that will take care of the steam satisfactory.

Regarding the water piping to the water chamber boxes, etc., this was the original intention of the proposition, that we equip the machines and boxes with water connections, but we did not plan at any time on running piping from their water mains to these water boxes as there would be no way of determining how much pipe would be required, not knowing where the mains would be located. We do however, fully equip the machines and boxes with the proper connections.

If Mr. Bond insists on the "Y" connections instead of the "T," you can have him pick out this with the other fittings.

Very truly yours,

Pres't.

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Plaintiff's Ex. 72.

Cusick, Wash.

McDonough Mfg. Co.

Eau Claire, Wis.

Gentlemen:

The cut off saw for our mill should be a right hand thread on arbor.

Yours resp.

M. A. PHELPS LBR. CO.

John R. Bond.

448      *M. A. Phelps Lumber Company v.*

PLAINTIFF'S EX. 75.

Cusick, Wash., Feb. 19, 1911.

McDonough Mfg. Co.,  
Eau Claire,  
Wisc.

Gentlemen:

I am sending you blue print of our engine and boiler room, with setam pipe rough drawn on same. This will give you a better idea of the piping.

Yours resp.,

JOHN R. BOND.  
For Phelps Lbr. Co.

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PLAINTIFF'S EX. 76.

Cusick, Mar. 26-11.

McDonough Mfg. Co.

Gentlemen:

Drawing No. D. 47/6 of Filing room machinery O. K.

Yours resp.,

JOHN R. BOND.  
Phelps Lbr. Co.

PLTS. EXHIBIT 78.

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Jany. 19, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Regarding the hog which you are to furnish, in conversation with Mr. Bond, we have concluded that if you



have not made this shipment that it might be better to cancel that part of the order for several reasons, and if you will please advise us what deduction you would make by not shipping it, also the driving machinery for the same, we will let you know immediately by wire.

The idea is that we might want, if any, a larger one than that.

Wire at our expense.

Yours truly,  
M. A. PHELPS LUMBER CO.  
(Sgd.) By M. A. Phelps,  
President.

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PLTFS. EXHIBIT 79.

March 22, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Your letters and telegrams received.

Regarding the cleats for the burner conveyor, would say, that you should furnish those specified in section 122 of specifications and your drawing No. 488.

There is also the connecting rods, which have not been received for the nigger, the loader and the kicker. And we presume that you will ship the extra box for the line shaft, which we called to the attention of your Mr. McIntyre. You have probably heard from him in regard to this matter.

We will make settlement for Car No. 85658 on receipt of the same and as soon as checked out.

As we stated in the former letter, there is no refuse conveyer in the lath room.

Yours truly,

M. A. PHELPS LUMBER CO.

(Sgd.) By M. A. Phelps,

\_\_\_\_\_  
President.

PLTFS. EXHIBIT 80.

McDonough Mfg. Co.,

Jany. 19, 1911.

Eau Claire, Wisconsin.

Gentlemen:

You may ship us the saw order as follows, Henry Disston make:

3 Band Saws, 44 ft. 6 inches x 12 x 14 gauge, 1¾ teeth, left-hand;

10 Edger Saws, 26-inch x 8 gauge, 26 teeth;

4 Slasher Saws, 36-inch x 8 gauge, 72 teeth, lance;

18 Trimmer Saws, 24-inch x 9 gauge, 72 V teeth;

6 Lath Saws, 12-inch x 12 gauge, 26 teeth;

10 Lath Bolter Saws, 18-inch x 8 gauge, 24 teeth;

4 Lath Trimmer Saws, 30-inch x 9 gauge, 90 teeth.

2 Swing Cut-off Saws, 42-inch x 8 gauge, 80 teeth.

We have also ordered, to be shipped with the same shipment:

2 Band Saws, 44 ft. 6 inches x 12 x 14 gauge, 1¾-inch teeth, left-hand;

2 Slasher Saws, 36-inch x 8 gauge, 72 teeth, lance.

We will adjust the freight matter with you later on.

Yours truly,

M. A. PHELPS LUMBER CO.

(Sgd.) By M. A. Phelps,

\_\_\_\_\_  
President.

PLAINTIFF'S EX. 81.

Spokane, Wash, Sept. 1st, 1910.

McDonough Mfg. Co.,

Eau Claire, Wisc.

Will place order probably between tenth and fifteenth of September.

M. A. PHELPS LBR. CO.

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PLTS. EXHIBIT 82.

June 28, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your wire of June 27th received. Replying to same, would say, that we very much dislike the way you put it, that we are not complying with the conditions in the contract. As you well know, you were the first ones to break it. However, we will mail you statement of account directly after the first, when we will probably have all the items of pipe and steam fitting in, together with some other items.

Yours truly,

M. A. PHELPS LUMBER COMPANY.

(Sgd.) By M. A. Phelps,

President.

MAP/GHL

## PLTS. EXHIBIT 83.

June 16, 1911

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your wire of June 14th received. We are unable to understand why the Muskegon boiler erectors at Cusick advised the Muskegon people as they did, as there was no occasion for anything of the kind, as they were advised that there was three hundred dollars available at any time to pay expenses.

The writer was at Cusick yesterday and the 14th, and the foreman informed me that they would be through either the 17th or 19th, and requested that we furnish them with three hundred dollars by that time; the same has been forwarded to them today.

We have also received a kick from the Muskegon Boiler people regarding the manner in which the boilers were unloaded, and we see no reason for that, as we took particular pains to have them unloaded in the best shape possible. One or two of the boilers were turned end for end so that there would be no trouble in that respect. They were also left on the blocking so that the erectors would not have to raise them scarcely at all. The writer has been there several times as the work progressed and they made no kick or even mentioned the matter to him.

Yours truly,

M. A. PHELPS LUMBER COMPANY.

(Sgd.) By M. A. Phelps,

President.

PLTFS. EXHIBIT 84.

June 3, 1911

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Gentlemen:

Your letter of May 29th at hand. You probably have received before this time all the expense bills for all of the shipments.

Regarding the matter of the three notes which are due, if you will kindly forward them to the Spokane & Eastern Trust Company of this city, where they are made payable, we will replace them with new notes and pay the interest.

Yours truly,  
M. A. PHELPS LUMBER COMPANY.  
(Sgd.) By M. A. Phelps,  
President.

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PLAINTIFF'S EX. 85.

Spokane, Wn., March 6th/11.

McDonough Mfg. Co.,  
Eau Claire, Wis.

You may furnish Atkins saws if not already bought; will take the boiler proposition up with McIntyre, but finish shipment.

M. A. PHELPS LBR. CO.

## PLTFS. EXHIBIT 86.

April 17, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Please ship at once the following shortage to complete transfers and refuse conveyors.

Thirty feet 104-F and 104-C chain;

Twenty feet number 110;

Eighty-one links number 75, and 4 fixtures for same;

Twenty feet number 78 chain;

Fifteen feet steeple top chain for transfer;

Fifteen feet number 82 chain.

M. A. PHELPS LUMBER COMPANY.

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PLTFS. EX. 87.

May 5, 1911.

McDonough Mfg. Co.,

Eau Claire, Wisconsin.

Gentlemen:

Your several letters of recent date at hand. Regarding the payments which you claim are due, we would say, that if the material had been received as per agreement there is no question about when these payments are due, but you well know that while all of the machinery was to have been received at Cusick the 15th of March, according to a letter received today from the Muskegon people the last car of boiler material is not shipped yet. That letter was dated May 1st, and it takes fifteen days for freight to come from Muskegon; that would bring it, at the earliest, the 20th of May, which is more than two months beyond the time it should have all been re-

ceived here. You can readily see that it is handicapping us in losing the best part of the sawing season and the best part of the season for seasoning lumber.

As the matter now stands we are paying you interest on paper, and have paid you money, that is absolutely of no use to us at the present time. As a matter of fact and right we should charge you back with interest on payments that we have already made.

If you had furnished this material as per agreement there would have been no question about the payments. As the matter now stands, we do not like to make further payments until the material is received; when that time comes there should not be the slightest trouble in effecting a settlement.

Yours truly,

M. A. PHELPS LUMBER COMPANY.

(Sgd.) By M. A. Phelps,

President.

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PLAINTIFF'S EX. 88.

Eau Claire, Wis., U. S. A., Oct. 1st, 1910.

The M. A. Phelps Lumber Co.,

Spokane, Wash.

Gentlemen:

We are mailing you under separate cover today corrected blue print of your concrete pier plan. The only correction we have made is in showing the location and dimensions of your large concrete pier to support the nigger cylinders, which we feel you should put in. Upon

receipt of this we wish you would destroy the print sent you yesterday or return same to us.

Yours very truly,

McDONOUGH M'F'G. CO.,

D-47/14

By (Sgd.) J. W. Hubbard,

J W H/A

Pres't.

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PLAINTIFF'S EX. 89.

Eau Claire, Wis., U. S. A., Oct. 3rd, 1910.

M. A. Phelps Lumber Co.,

Spokane, Wash.

Gentlemen:

We are mailing you under separate cover today detailed specifications of machinery for upper and lower floor of your plant, also upper floor, Dr. D-47/1, lower floor D-47/2, side timber elevation D-47/3 and end timber elevation D-47/4.

Wish you would check all of these over as early as possible, giving us your approval by wire if you find everything correct, and if not, advise us at the earliest possible moment by mail any discrepancies you may note. We believe, however, that you will find everything to correspond exactly according to order.

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.



PLAINTIFF'S EX. 90.

Eau Claire, Wis., U. S. A., Oct. 5th, 1910.

M. A. Phelps Lumber Co.,  
Spokane, Wash.

Gentlemen :

We are still unable to get the boiler proposition adjusted with the idea of installing two more boilers instead of a burner. The boiler people so far have advised us that the price for the two extra boilers would be just double the cost of the two formerly quoted on. We think, however, this is not the case, as the two additional boilers should not require another smoke stack; also, it would seem to us, would require less fittings, britchen and perhaps some other parts, and we are writing them again today and will endeavor to make an engagement with them in Chicago some time within the next two or three days and if we can do so, the writer will meet them there and try and get the matter threshed out so as to advise you fully within that time.

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.

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PLAINTIFF'S EX. 91.

Eau Claire, Wis., U. S. A., Oct. 12th, 1910.

M. A. Phelps Lumber Co.,  
Spokane, Wash.

Gentlemen :

We have finally succeeded in getting the Muskegon Boiler Works checked up on the proposition of installing

two more boilers instead of a burner and are enclosing you herewith a copy of a letter dated Oct. 11th, just received from them, in which they have, at our request, shown the comparative cost of the different installations. We believe there is very little we can add to the subject, as they have covered it in their letter and believe there is not much of an argument against the installation of the extra two boilers in preference to a burner, especially in view of the fact that it is almost a universal rule that saw mills are always added to rather than reduced in the amount of power required.

We are quoting you, in accordance with their letter, the exact prices as they have quoted us and are today sending a copy of their proposition No. 1415, on the four boiler equipment, amounting to \$8900.00, to our Mr. McIntyre, with the request that he see you as early as possible with a view of getting the boiler proposition decided, as we cannot get out our drawings of boiler room engine setting, etc., or complete our specifications until this matter is decided.

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.

Muskegon, Mich., Oct. 11th, 1910.

McDonough Mfg. Co.,

Eau Claire, Wis.

Gentlemen:

Referring to the power plant of the Phelps Lbr. Co. at Cusick, Wash., and especially to the advisability of

installing two 72x18' boilers with its necessary equipment, together with a refuse burner to take care of refuse from the mill, against installing four 72x18' boilers and their equipment.

We would especially recommend the installation of the four boilers. First, as a matter of economy to the purchaser. We estimate the burner to cost between \$6000 and \$7000, say \$6500. The installation of one battery of two boilers would cost \$4350, making total cost of two boilers, with refuse burner, \$10,850. On the other hand, the four boilers set in one battery, with side extension britchen, independent stack outside of power house, almost a duplicate of the setting of the Fidelity Lbr. Co.'s, except that there are four 72x18' boilers instead of five 78x18', would cost \$8900, or a saving over the other proposition of \$1950.00, first installation. Whereas, if it were ever found necessary to increase the boiler capacity or feel the need of additional power, it would be necessary to install two more boilers at an additional cost of, say, \$4350.00. This would make an equipment of four boilers with the refuse burner, costing \$15,200.00, whereas if the four boilers are installed in the first place, there will be a saving of \$5300.00, and they will be of sufficient capacity to take care of all the refuse from the cut, providing the slabs and heavy refuse are piled out and are sold or disposed of outside of the boilers; in other words, the two extra boilers would take the place of a refuse burner.

Providing the four boilers are decided upon, we would recommend their being set in one battery, independently, with side extension britchen extending over the four

boilers and connecting to stack, resting upon independent foundation outside of power house. The stack in this case would be of heavy material, 72" diam., 125' high, of steel surmounted by 11' 6" spark arrester.

While there is a couple of hundred dollars difference between this style of installation over the center draft britchen and direct stack, the installation is by far superior and give better satisfaction wherever used.

We would respectfully solicit your careful attention to this proposal and accompanying figures, as we feel this installation would give by far the best satisfaction at the least cost.

Yours very truly,  
MUSKEGON BOILER WORKS.  
(Sgd.) J. F. Callan.

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PLAINTIFF'S EX. 92.

Eau Claire, Wis., U. S. A., Oct. 12th, 1910.

M. A. Phelps, Esq.,  
Spokane, Wash.

Dear Sir:—

In further relation to your telegram of the 10th inst. regarding plans and specifications mailed you, we understand from your letter that what you refer to where you state the sections are reduced in weight and dimensions, is in reference to the diam. of the shafting above 2 15/16". We have written our Mr. McIntyre regarding this today, and will state now that we as well as a number of other manufacturers adopted sizes several years ago, 1/8" below the standard size, instead of 1/16" below; for instance, the old practice was to turn 4" shaft-

ing to  $3 \frac{15}{16}$ ". It has been found, however, that in recent years the mills are rolling the stock very close to the actual sizes; infact, in some cases slightly under size, so that on the larger bars it has been found a great many times that they would not clean up in turning them  $\frac{1}{16}$ " smaller than the rough dimensions. We accordingly adopted a standard 1.8" below the standard rough dimensions; for instance, the  $3 \frac{1}{2}$ " bars are turned  $3 \frac{3}{8}$ " instead of  $3 \frac{7}{16}$ ", the four bars are turned  $3 \frac{7}{8}$ " instead of  $3 \frac{15}{16}$ ". This, however, has no bearing whatever on their strength or their cost to us, unless perhaps it might cost a little more to turn off  $\frac{1}{8}$ " than  $\frac{1}{16}$ ", but, in any case, they have been adopted as a standard for a number of years by most of the leading manufacturers, and we cannot see why there should be any objection to these dimensions, but, on the other hand, if you insist on having them turned by 16ths, we can perhaps pick out some bars that will permit of these dimensions and will be glad to do so upon receipt of your advice to that effect.

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.

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PLAINTIFF'S EX. 93.

Eau Claire, Wis., U. S. A., Dec. 9th, 1910.

M. A. Phelps Lumber Co.,

Spokane, Wash.

Gentlemen:

We are today in receipt of quotations on pumps for your boiler room. The price on a Duplex pump for three

boilers, size  $7\frac{1}{2} \times 5 \times 6$ , with brass lined water cylinder and Tobin Bronze rods, is \$113.13 F. O. B. Cusick, Wash., and the price of a  $6 \times 4 \times 6$  Duplex pump for a battery of two boilers, with brass lined water cylinders and Tobin bronze piston rods is \$87.00 F. O. B. Cusick, making the additional price to you for the three boiler pumps \$46.13.

Please confirm this price to us; also confirm the order for the three boiler installation in place of the two boiler so that your records and ours may be complete in regard to these changes.

Very truly yours,  
McDONOUGH M'F'G. CO.  
By (Sgd.) J. W. Hubbard,  
Pres't.

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PLAINTIFF'S EX. 94.

Eau Claire, Wis., U. S. A., Dec. 14th, 1910.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

Enclosed please find copy of letter received today from the Muskegon Boiler Wks. with copy of sketch referred to in their letter. We have written them as per copy enclosed and would suggest that you furnish them the information requested direct, sending copy to us here.

We have not done anything towards making the boiler house plans and believe we will be unable to proceed until we get the boiler settings from them, therefore your reply

direct to them will save some delay in getting the drawings under way.

Very truly yours,  
McDONOUGH M'F'G. CO.  
By (Sgd.) J. W. Hubbard,  
Pres't.

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PLAINTIFF'S EX. 95.

"Attention, Mr. Phelps."

Eau Claire, Wis., U. S. A., Dec. 19th, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Dear Sir:—

We are today in receipt of a letter from Mr. Kelly, stating that you have advised him that you would prefer to use the special bevel gears rather than the corner belt pulleys. We have accordingly instructed our draftsman to lay this out, but before doing very much work on them, would want to have your confirmation of these instructions, as it is a change from the original plan, and as advised you in several of our letters, we are keeping you posted with everything in connection with the mill so your files will be complete, and also want to have your confirmation for any instructions that Mr. Kelly gives us.

Very truly yours,  
McDONOUGH M'F'G. CO.  
By (Sgd.) J. W. Hubbard,  
Pres't.

## PLAINTIFF'S EX. 96.

Eau Claire, Wis., U. S. A.,

Dec. 20th, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

We have yours of the 17th inst. accepting our proposition on boiler feed pump, and also accepting the new boiler proposition for three boilers instead of two.

As previously advised, we have made the change in the lath bolter and Hog in accordance with your instructions, but have not yet made any change in the conveyor, as we are waiting for a reply to our last letter on this subject.

We still recommend strongly your using the corner pulleys instead of the special gears; we have in one or two cases made these special gears, but they are always more or less unsatisfactory and in case of a breakdown are a very expensive proposition, while the corney pulley should never give you any trouble. You understand, of course, that we will be obliged to charge you with the difference in the cost of the pattern and special gear over those originally specified, for the reason that the conveyor as originally decided upon would not have interfered in any way with the sorting works, as it was to have an enclosed burner, while now you are going to cut that out for an open fire pit, which is the cause for this change, and before proceeding with the special patterns would like to have your approval of the extra work, as we have received no instructions from any one but Mr. Kelly. As mentioned in several of our recent letters



and also intimated in your present letter, it is much better that all correspondence pertaining to the order to be carried on between your office and ours rather than with Mr. Kelly.

Replying to that part of your letter in which you state that Mr. Kelly has received information which has not been turned over to you, it is barely possible that something has gotten by us, but we cannot recall, however, at this time of sending anything to Mr. Kelly without sending you a duplicate, at least we will certainly be very careful to do this in the future and agree with you fully that it is the proper method of handling these transactions.

We understand from Mr. Kelly that he is getting along very well with the building and will endeavor to get out your first car within a very short time. We expect to be somewhat handicapped for the next week or ten days on account of the Holidays, as we have found in the past that they usually cut into our crew more than the two days.

With kind regards and wishing you a Merry Xmas and Happy New Year, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

## PLAINTIFF'S EX. 97.

Dec. 23rd, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

In deciding the boiler arrangement, it is necessary that we have a sketch of the boiler room, showing just where the pipes will come out for the engine and the mill. We are accordingly writing Mr. Kelly as per copy enclosed; if you prefer to furnish this information rather than have Mr. Kelly furnish it, please advise us by return mail and oblige,

Very truly yours,

\_\_\_\_\_  
Pres't.

## PLAINTIFF'S EX. 98.

M. A. Phelps Lbr. Co.,

Dec. 23rd, 1910.

Spokane, Wash.

Gentlemen:

In further reference to our letter of this A. M. would like to have you send us at least a rough sketch of the boiler room as you have planned it, from which we can obtain details at different times in regard to the boilers and other items to be sent to Muskegon. It seems the absence of this sketch is delaying the completion of their drawings, so if you will send us or have Mr. Kelly send us a sketch showing about what you propose to use, we think it will expedite matters considerably.

Very truly yours,

\_\_\_\_\_  
Pres't.

PLAINTIFF'S EX. 99.

Eau Claire, Wis., U. S. A., Jan. 9th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We are today in receipt of a letter from the Muskegon Boiler Works, advising that all information in connection with the boilers is being delayed, waiting for a drawing from you showing the arrangement of boiler room and location of boilers and stack.

We would suggest that you rush this along as much as possible so they will not have any excuse for being delayed with the shipment. Also please send us a duplicate of the drawing you send them so that our records may be complete.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

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PLAINTIFF'S EX. 100.

Night Letter.

Eau Claire, Wis., Jan. 23, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wn.

Replying to your letter of nineteenth, we will make a reduction of two hundred eighty-four dollars from the price of your order if you decide to have us leave out the hog; advise us as early as possible if you decide this way.

McDONOUGH MFG. CO.

## PLAINTIFF'S EX. 109.

Eau Claire, Wis., U. S. A., Jan. 7th, 1911.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

Replying further to yours of the 21st ult. we have made a special drawing, No. B-589, blue print of which we are mailing you under separate cover today, showing the general idea of the construction of the return for log chain. The location of the rails as shown on the end view is about what you should use. As to the placing of the idlers, this will be governed by the location of your bents; we believe, though, that the slack can be taken up about as shown by dotted lines. There is no definite rule for this; your mill constructor will have to use his judgment a good deal in this case.

We wish you would send us a copy of your boiler house arrangements as soon as you have it finished. We are mailing you under separate cover today saw mill machinery catalog and two photos of the vertical and valve, and have given our shop instructions to forward the foot sheave complete for bottom of your log slip on the last car for Dalkena, which will leave here the latter part of next week. We have your first car of machinery nearly completed and expect to forward same the latter part of next week. It may be, in fact, that we will hold the foot sheave for your own car. This car will contain the line shaft and some of the other transmission parts. We have added the extra bull chain as per copy of order enclosed.

We notice by the latest issue of the American Lumberman that you have your mill almost entirely enclosed,

in fact, expect to have it enclosed by the first of the year. We are glad to hear this, as no doubt the bad weather will be setting in now. It is also evident that pretty good progress has been made at the mill, and you will now be in good shape for taking care of the machinery as it arrives. We have made arrangements for shipping the first 2 or 3 cars now very promptly, most of the machinery being nearly completed and on our assembling floor at this time.

Hoping everything will go along nicely with you from now on, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

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PLAINTIFF'S EX. 110.

Seattle, January 9, 1911.

M. A. Phelps, Esq.,

Care of the M. A. Phelps Lumber Co.,

609 Empire State Bldg.,

Spokane, Wash.

Dear Sir:—

I was away when your letter of the 31st ultimo, together with the contract, arrived; hence, delay in answering. I will be at your office Thursday morning of this week and will fix this matter up satisfactorily.

Yours very truly,

McDONOUGH MANUFACTURING CO.

(Sgd.) W. M. McIntyre,

Western Manager.

## PLAINTIFF'S EX. 111.

Eau Claire, Wis., U. S. A., Jan. 20th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We received a letter from you several days ago saying that you would advise the manufacture of saws you would prefer. We are holding back the order for the saws, waiting this information, which we would like to have as early as possible, as it would be well to have the saws in course of construction as early as possible to avoid any unnecessary delay.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

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Pres't.

## PLAINTIFF'S EX. 112.

Eau Claire, Wis., U. S. A., Jan. 20th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

Some time ago we wrote you for the hand of the swing saw, but up to the present have not received your reply. Our letter no doubt has gone astray in the mails, and we would be pleased to have you advise us if you want this saw right or left hand.

Thanking you in advance for your prompt attention, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) C. F. Campbell.

PLAINTIFF'S EX. 113.

Eau Claire, Wis., U. S. A., Jan. 23rd, 1911.

M. A. Phelps Lumber Co.,  
Spokane, Wash.

Gentlemen:

Replying to yours of the 19th inst., we will make a reduction of \$284.00 if you do not use the Hog, specified in your order and have wired you to this effect today.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

\_\_\_\_\_  
Pres't.

COPY ATTACHED TO PLTFS. EX. 113.

Night Letter.

Jan. 23rd, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Replying to yours of the 19th inst., we will make a reduction of two hundred eighty-four dollars from the price of your order if you decide to have use leave out the Hog. Advise us as early as possible if you decide this way.

McDONOUGH MFG. CO.  
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PLAINTIFF'S EX. 115.

Eau Claire, Wis., U. S. A., Feb. 1st, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We are forwarding you under separate cover today, blue prints of boiler feed conveyor pan and burner con-

veyor pan, which we wish you would check over and advise us if any corrections are to be made. Not hearing from you within the next week or ten days, we will place the order for the pans in accordance with these prints.

Very truly yours,

McDONOUGH M'F'G. CO.

By (Sgd.) J. W. Hubbard,

Pres't.

COPY.

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PLAINTIFF'S EX. 116.

Feb. 25th, 1911.

M. A. Phelps Lbr. Co.,

Cusick, Wash.

Gentlemen:

As we are nearing the completion of your order, would be pleased to have you advise us at once regarding the conveyor pans. It will take some time to have these made up, and as you wish to have your machinery shipped as soon as possible, we trust we will hear from you by return mail.

Thanking you in advance for a reply, we remain,

Very truly yours,

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CC



PLAINTIFF'S EX. 117.

Eau Claire, Wis.,  
Mch. 18th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We are forwarding today N. P. car No. 85658, which contains all of the mill machinery on your order, with the exception of the engine, saws, pump, boilers and drive for filing room machinery. We would be pleased to have you advise us as per ours of the 4th inst. in regard to the shafting, pulleys, hanger, etc., for your filing room, also how you want the steel cleats spaced on burner conveyor chain.

Thanking you in advance for above information as we would like to receive same before the car with saw mill engine goes forward, which we expect will be in a very short time.

Very truly yours,

McDONOUGH M'F'G. CO.

C C

By (Sgd) C. F. Campbell.

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PLAINTIFF'S EX. 118.

Eau Claire, Wis., U. S. A., Apr. 15th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We received your night letter this A. M., which we are entirely at a loss to understand, in fact, without a more detailed reply to our night letter sent you on the 11th inst., we cannot help but believe you have taken a very

unreasonable stand for some reason in regard to fulfilling your part of the contract. We cannot add very much to the letter we sent you yesterday explaining the reason the last car has not left, which is due entirely to the fact that you sent us an order for an extra conveyor, which we were obliged to complete so as to go on last car, otherwise this shipment would have left here several days ago, as it is now, we have the conveyor about finished, in fact, we will load the balance of machinery so as to leave here Monday or Tuesday, the 17th or 18th. This completely cleans up your contract as far as we are directly concerned; the fact that the boilers have not been shipped is due entirely to your earlier action in having that order held back until you could decide what you would do about the third boiler. This necessarily made more or less changes in the boiler equipment and consequently the delay.

We have repeatedly written the Muskegon Boiler Wks. and talked with them over the long distance 'phone, endeavoring to have them rush out balance of shipment, which they promised to ship before this. We have not, however, received the shipping notice and have requested them again today, to wire us when they would ship and in fact instructed them to ship immediately.

Considering all this and the fact that the contract is completed with the exception of shipment of boilers and that you have two cars on hand, the third on the way and the last car will leave here Monday, you must readily appreciate the fact that we are getting a lot of money invested in your contract, in fact much more than we can

afford to carry, in the face of the price we received. You understand also that we were obliged to purchase a great deal of the equipment on the outside, which is strictly thirty days' payment, further our labor is cash every 15 days and we must therefore insist that you forward us by return mail, your full remittance for all shipments up to date and the balance, as specified in the contract, after the cars arrive.

We do not know of any case where we have broken our agreement while your action in holding back the payments is surely an open violation of the contract. We think therefore you have no reasons for making any such threats as you have about taking any action to complete your plans, in fact it is we that should be considering some action to protect ourselves and we are surely going to insist on your forwarding us the balance due by return mail.

Very truly yours,  
McDONOUGH M'F'G. CO.  
By (Sgd.) J. W. Hubbard,  
Pres't.

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PLAINTIFF'S EX. 119.

Eau Claire, Wis., U. S. A., Mch. 4th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

We are in receipt of your telegram of last evening and in answer wired you as per copy enclosed.

Further regarding the enclosed will say that the N. P. car No. 55455 was forwarded to you on the 28th ult.

This car contained your carriage, some of the lath machinery and other transmission machinery. We are at work on the balance of the mill machinery and expect to ship the last car about the middle or latter part of next week and the engine in two weeks. Recently we mailed you an itemized list of balance of machinery on your order and would be pleased to have you check this over at once, advising us in order that there may be no shortage on last car going forward. Trusting above is satisfactory and hoping the last car forwarded has reached you by this time, we remain,

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) C. F. Campbell.

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DEFENDANT'S EX. 124.

Eau Claire, Wis., U. S. A., April 6th, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

Referring to your recent night letter regarding the matter of chain short and other machinery to go forward, will say we wired you as follows: "Boilers go forward 5th inst., engine, saws, pump, chain, ten days to two weeks," which we beg to confirm.

Further regarding above will say that we are at work assembling the engine and as we have the saws and chain on hand, also the pump, we expect to forward a car within the next ten days or two weeks. We are in receipt of advice from the Muskegon Boiler Wks. that the

boilers are going forward and have advised them to put a wire tracer after same in order to avoid any delay. Trusting above is satisfactory, we remain,

Very truly yours,

McDONOUGH M'F'G. CO.,

C C

By (Sgd.) C. F. Campbell.

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DEFENDANT'S EX. 125.

Eau Claire, Wis., U. S. A., April 10th, 1911.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

Referring to your several recent favors regarding the material and equipment yet to be shipped to complete your order, we made out an order for the extra conveyor from lath mill, our No. 20657, which was mailed you several days ago and are enclosing you herewith copy of the order for the set collars which we understand is an extra as you do not refer to any sections in which they are to be used; if however, these are to go on to some sections that have not been shipped complete, wish you would advise us as we wish to keep an account of the extras separate from original contract.

We have written you before regarding the shaft and boxes for belt tightener frame. This is something we have never furnished with any mills we have built. This is a part of the millwrighting, the frames usually being carried on pieces of gas pipe cut to suit conditions of the wood frame work. The running shafts for the tighteners are of course in the pulleys when they are shipped.

We have again written our Mr. McIntyre to check off

the bill of the steam piping and fittings. We hope he will have attended to this matter before this letter reaches you.

Regarding the iron pan for end of refuse conveyor, we sent you blue print of this on Feb. 1st, also wrote you for your approval, stating at that time that if we did not hear from you inside of ten days, the pan would be ordered exactly according to the sketch we sent you, which is in accordance with original order. If you desire a 20' pan, you should have advised us at once. Our standard pans are all 10' long, in fact this is what was originally figured on in connection with your burner. We suppose that if you decide to put in the longer pan, you will now order it in Spokane, however, if you wish to have us purchase it for you here, you better wire us immediately upon receipt of this letter.

Referring to yours of the 17th ult, regarding the iron for ends of the carriage, we do not believe it is customary to iron the ends where the four bumpers are used as the blow from the carriage comes directly on the end of the main lengthwise sticks of the carriage frame. The iron in fact, would have a tendency to upset the end of pistons of the air cushions; this is something at any rate, that would go in on your hardware equipment, if you decide to put it on as it is not a part of the standard equipment. This also applies to piping for the water on your band saws. This will consist of a small piece of hose leading from any convenient point to the band saw guide and any arrangements you might decide on for furnishing a little water for this purpose, but is not a part of the band mill.

There are a great many small details of this kind in fact on which your sawyer, millwright and other operators will want to use their own judgment as there is really no standard arrangement for a great many of the operating details of a saw mill.

Referring now to yours of Mch. 16th, regarding bar stock, etc., the pump will be shipped on the last car. The 60" of  $\frac{7}{8}$ x6 round link chain with cleats will also be on last car together with the 75" of extra log haul chain with dogs, shipped on last car. The conveyor from lath mill is referred to above.

Referring now to the bar stock, we will ship on the last car the 156" of  $\frac{3}{4}$ x $\frac{1}{4}$ , and 315' of  $1\frac{1}{2}$ x $\frac{1}{4}$  for the slasher, we will ship 3 pieces of flat carriage track 17' 4" long; we will also ship the 63" 4" of  $1\frac{1}{4}$ x $\frac{1}{8}$  and 98' of  $3\frac{5}{8}$ x $\frac{1}{8}$ , also 560" of light Tee rail for return of log slip and wired our Mr. McIntyre to have you purchase the 560' of  $\frac{3}{4}$ x3" flat iron for the log slip, as you were in a special hurry for it.

Referring to the other items of bar stock, we have never before ironed the inside of the conveyors, in fact we have never taken this into consideration. You will find this is true of the Lane Lbr. Co. mill which you examined at Harrison, we are therefore not shipping the following:

1200' of  $1\frac{1}{4}$ x $\frac{1}{4}$ ".

780' of  $1\frac{1}{4}$ x $\frac{1}{4}$ ".

700' of  $1\frac{1}{2}$ x $\frac{1}{4}$ ".

Regarding the 850 sq. feet of 16 guage sheet steel, we have never before heard of putting steel hoppers in

chutes in saw mill conveyors and in fact do not understand what you refer to by this item.

Referring to the 350' of  $\frac{1}{4}$ " flat iron for lumber sorting works chains, you cannot use iron in connection with these chains. The sides or ways for the chains are usually made of fir and sometimes hardwood, grooved out on a planer to the shape of the chain links. The Dalkena Lbr. Co. run out the stock for their chain which is the same as your own so that if your planing mill is not in operation, it is likely you could purchase the wood race from them as they perhaps still have the planer knives for making the grooves.

We have the engine practically finished and arrangements made for forwarding the last car of machinery within a few days. The first shipment of boilers has already gone forward and we are right after the boiler people to rush out balance with the least possible delay.

Very truly yours,

McDONOUGH M'F'G. CO.,

By (Sgd.) J. W. Hubbard,

Pres't.

DEFENDANT'S EX. 127.

Eau Claire, Wis., U. S. A., Nov. 25th, 1910.

M. A. Phelps Lbr. Co.,

Spokane, Wash.

Gentlemen:

We are today in receipt of a proposition from the Muskegon Boiler Works on the three boiler installation, their proposal No. 1446, which we are mailing today to Mr. McIntyre with the request that he see you at once and assist you in every possible way in adjusting the



boiler equipment. We would suggest also that it might be well for you to have a little talk with Mr. Kelly who is perhaps as well posted on saw mill boiler installation as any one you could discuss the matter with.

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) J. W. Hubbard,  
Pres't.

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PLAINTIFF'S EX. 129.

Eau Claire, Wis., U. S. A., Feb. 23rd, 1911.

M. A. Phelps Lbr. Co.,  
Spokane, Wash.

Gentlemen:

Referring to the location of steam pipes leading from the boilers to the engines and mill, we recently received a rough pencil sketch from Mr. Bond giving us an idea of about how he preferred to have the pipes located. We have made tracings from this print which we enclose you herewith, our No. B-437.

Please have this checked over as early as possible, advising if arrangement we have shown is satisfactory. If not, please advise us what corrections are necessary as boiler people will be requiring this information as early as possible.

Very truly yours,  
McDONOUGH M'F'G. CO.,  
By (Sgd.) J. W. Hubbard,  
Pres't.

PLTF'S. EXHIBIT 130.  
NIGHT LETTER.

Apr. 4, 1911.

McDonough Mfg. Co.,  
Eau Claire, Wisconsin.

Chains short as follows: thirty feet of number 104 and 104 C; thirty feet of number 110; eighty-one links of number 75; four links of number 75 with fixtures. Be sure and have this come in the last car.

There may be more chain wanted yet to complete the mill.

If not shipped, please advise by wire immediately when you will ship the engine, saws and other material.

M. A. PHELPS LUMBER COMPANY.

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PLTF'S. EX. 131.

December 31, 1910.

McDonough Mfg. Co.,  
J. W. Hubbard, President,  
Eau Claire, Wisconsin.

Dear Sir:

We have your letter of Dec. 27th. Replying to same we are inclined to agree with your idea that Mr. Kelly may be past his prime. We think that he is capable of doing the work, but we also think and know that he is a very expensive man to employ, as he did not seem to get any results from his men. There was one thing we did not like in his leaving, and that is that he took some of the drawings with him.

We have a letter from the Muskegon people today, and have written them as follows:

“Your letter of 27th at hand. Replying to same, would say, that we find that it will be necessary to make some slight changes in the boiler setting, and we will send you blue prints within a day or two showing the whole plan of the power plant, and showing where we wish the stack to be set.”

Mr. Bond requested me to ask you to send him the point of the cushion in the shotgun, also description of valves, and any other information you may have in printed form. I would suggest that if you have a catalog of these machines that you forward the same.

Regarding the refuse conveyor, would say, that we have not changed our idea regarding the burner, but that, as outlined, any kind of a burner would be between the sorting works as the mill was planned.

We shall be in need of the idler and iron work for the end of the slip as soon as you can get it here. We were under the impression that you were to ship this with the Dalkena shipment.

Also, Mr. Bond would like the details of the return for the log chain. And, referring further to the log chain, would say, that it will require 525 ft. instead of 450.

Yours truly,  
M. A. PHELPS LUMBER COMPANY,  
By M. A. Phelps,  
President.

*In the District Court of the United States, Eastern District of Washington, Northern Division.*

NO. 1577.

McDONOUGH MANUFACTURING COMPANY, a  
Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corpora-  
tion,

*Defendant.*

ORDER.

On the stipulation of complainant and defendant by their respective counsel,

It is hereby ORDERED that the time within which the transcript on defendant's appeal in this cause shall be filed with the Circuit Court of Appeals for the Ninth Circuit is hereby extended to and including August 9, 1912.

Done in open Court this 10th day of July, 1912.

(Signed) FRANK H. RUDKIN,

*Judge.*

We consent to the above order, it being agreed that by reason of the length of transcript it is impossible to have the record printed within the regular time.

(Signed) McCARTHY & EDGE,

*Attorneys for Complainant.*

(Signed) DANSON, WILLIAMS & DANSON,

*Attorneys for Defendant.*

Endorsements:

Stipulation and Order extending time for printing Record.

Filed in the U. S. District Court for the Eastern District of Washington, July 10, 1912.

W. H. HARE, *Clerk.*

By F. C. NASH, *Deputy.*

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*In the District Court of the United States, Eastern District of Washington, Northern Division.*

No. 1577.

McDONOUGH MANUFACTURING COMPANY, a Corporation,

*Complainant,*

*vs.*

M. A. PHELPS LUMBER COMPANY, a Corporation,

*Defendant.*

CLERK'S CERTIFICATE TO TRANSCRIPT OF  
THE RECORD.

UNITED STATES OF AMERICA,

Eastern District of Washington—ss.

I, W. H. HARE, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the above and foregoing, consisting of pages 1 to 486 inclusive, plus 44 pages of inserts, is a true, full, correct and complete transcript of so much of the record, papers, exhibits, evidence, assignments of error and other proceedings had in cause Number 1577, wherein McDonough Manufacturing Company, a corporation, is complainant, and M. A. Phelps Lumber Company, a corporation, is defendant, as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals for the Ninth Judicial Circuit on

the appeal prosecuted by defendant. I further certify that it contains all of the evidence introduced on the trial and all of the exhibits admitted on the trial with the exceptions of the exhibits numbered 7, 20, 40, 41, 73, 74, 101, 102, 103, 104, 105, 106, 107, 108, 114, 120, 121, 122, 123 and 128, the originals of which I herewith transmit with the transcript of record pursuant to order of this Court so to do, which order will be found on page 387 of the printed record herein.

I further certify that the cost of preparing, certifying and printing the foregoing transcript is the sum of \$624.80, and that the same has been paid me by the defendant and the appellant.

I further certify that I attach hereto and transmit herewith the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court in Spokane in said District this 22nd day of July, 1912.

(Signed) W. H. HARE,

(Seal)

*Clerk.*

























